CLERK'S COPY. 7689

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 60.

AARON BRADSHAW, PLAINTIFF IN ERROR,

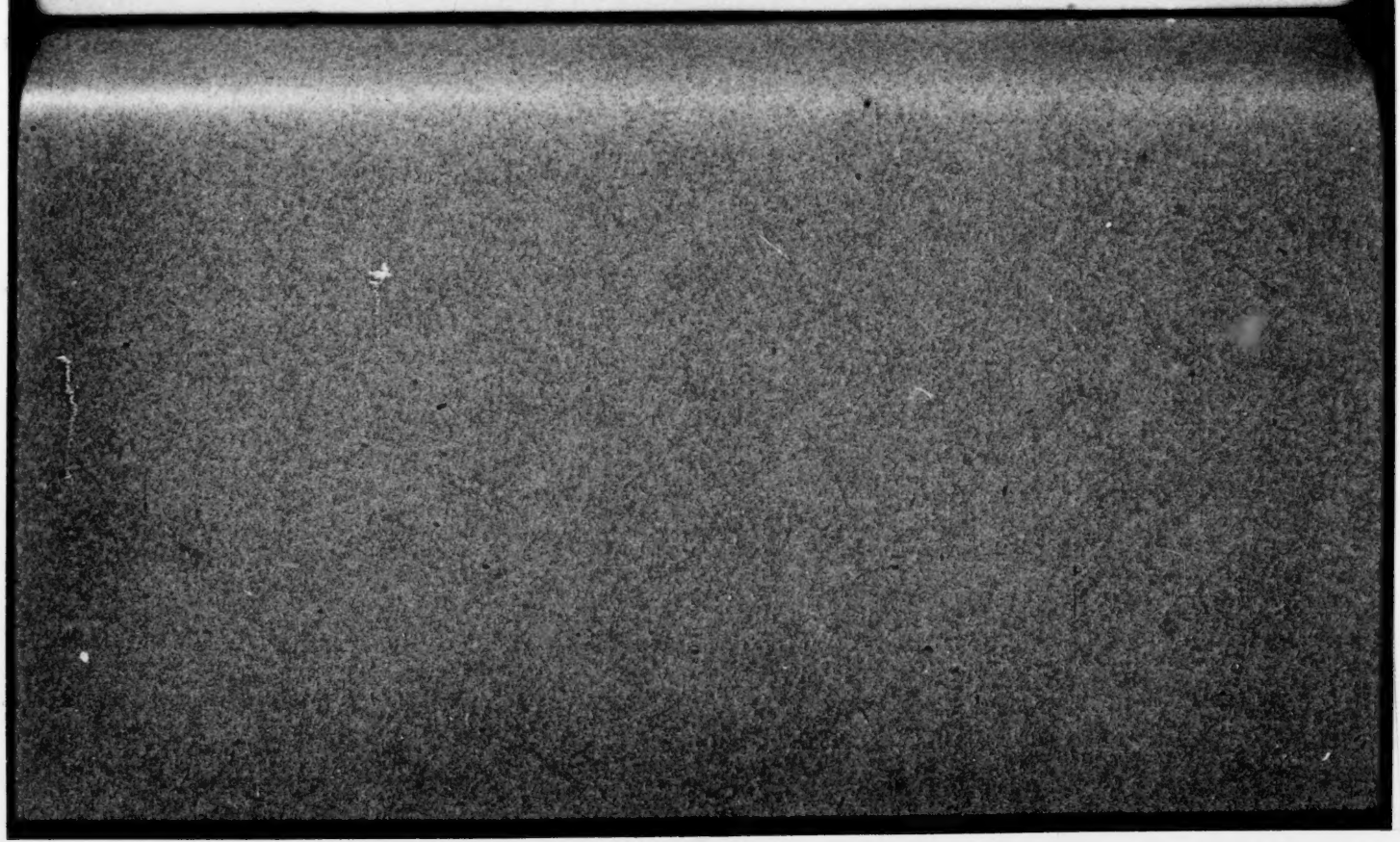
vs.

Mary M. Ashley vs. et al., Heirs of NEHEMIAH B. ASHLEY, deceased.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MAY 10, 1899.

(17,413.)



(17,413.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 299.

AARON BRADSHAW, PLAINTIFF IN ERROR.

vs.

NEHEMIAH B. ASHLEY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 In the Court of Appeals of the District of Columbia.

AARON BRADSHAW, Appellant,
vs.
NEHEMIAH B. ASHLEY. } No. 769.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY, Plaintiff,
v.
AARON BRADSHAW, Defendant. } At Law. No. 32181.

UNITED STATES OF AMERICA,
District of Columbia, } *ss.*:

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Memorandum.

Oct. 13, 1891.—Declaration filed.
Nov. 3, " —Defendant's pleas filed.
March 11, 1893.—Amended declaration filed.
April 24, " —Defendant's pleas to amended declaration filed.

Second Amended Declaration.

Filed October 26, 1896. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } No. 32181. At Law.

The plaintiff, with leave of the court first had and obtained, files this his second amended declaration.

1. The plaintiff sues the defendant to recover possession of an undivided one-fifth ($\frac{1}{5}$) part of each of several pieces or parcels of land situated in the city of Washington, in the District of Columbia, sometimes designated and described as lots one (1), two (2), and three (3), in square nine hundred and thirty-nine (939), in said city, and which said pieces or parcels of land are also sometimes designated and described as lots four (4), five (5), and six (6), in
2 said square, according to a so-called subdivision thereof recorded in Liber "C. H. B.," at folio forty-one (41), of the records of the surveyor's office for the District of Columbia, and to recover *of* an undivided one-fourth ($\frac{1}{4}$) part of that certain other piece or parcel of ground in said square sometimes designated and described as lot twenty (20) and sometimes designated, described,

and known as lot three (3), in accordance with the said so-called subdivision, the piece or parcel of ground composing the said four (4) lots herein referred to and described being the southwest part of said square and having a frontage of an hundred and fifteen (115) feet ten and three-fourth ($10\frac{3}{4}$) inches on North "B" street by a depth of an hundred and eighty-six (186) feet two inches fronting on East 9th street; of which described parts of the said lots and premises the plaintiff was heretofore, to wit, on the 27th day of March, A. D. 1889, lawfully possessed when the defendant, who is now in actual occupation of the said parts of the said lots and premises, entered upon the same and thereupon unlawfully ejected the plaintiff, and thenceforward unjustly detained and still detains the same from the plaintiff, and the plaintiff claims possession of the said described parts of the said lots and premises and appurtenances in fee-simple, together with the costs of this suit.

2. The plaintiff further sues the defendant for that the defendant heretofore, to wit, on the said 27th day of March, A. D. 1889, unlawfully entered each and all of the said certain pieces or parcels of land situate in the said city of Washington, in the District of Columbia, sometimes known, designated, and described as lots twenty (20), one (1), two (2), and three (3), in square nine hundred and thirty-nine (939), and sometimes otherwise known, described, and designated as lots three (3), four (4), five (5), and six (6), in said square, according to a so-called subdivision thereof recorded in Liber C. H. B., at folio 41, of the land records of the surveyor's office for the District of Columbia, the piece or parcel of ground composing the said four lots herein referred to and described being, as aforesaid, the southwest part of said square and having a frontage of a 115 feet $10\frac{3}{4}$ inches on North "B" street by a depth of 186 feet 2 inches, fronting on East 9th street, and ejected the plaintiff therefrom, and has continued to keep the plaintiff ejected and expelled from the said described lots and premises, of which said lots, sometimes known, designated, and described as lots one (1), two (2), and three (3), as aforesaid, and otherwise known, designated, and described as lots four (4), five (5), and six (6), according to the so-called subdivision, as aforesaid, the plaintiff was and is tenant in fee-simple of an undivided one-fifth ($\frac{1}{5}$) interest, and of which said lot, sometimes known, designated, and described as lot twenty (20), and sometimes known, designated, and described as lot three (3), according to said so-called subdivision, the plaintiff was and is tenant in fee-simple of an undivided one-fourth ($\frac{1}{4}$) interest; and the said defendant has, since the said 27th day of March, A. D. 1889, received the rents, issues, and profits thereof, to wit, of the value of one thousand dollars (1,000), whereby the plaintiff has lost the said rents, issue-, and profits of great value, to wit, of the value of one
3 thousand dollars (1,000), and the plaintiff sues to recover the said rents, issues, and profits and costs of this suit.

3. The plaintiff further sues the defendant to recover possession of an undivided one-fifth ($\frac{1}{5}$) part of each of several pieces or parcels of land situate in the city of Washington, in the District of Columbia, sometimes designated and described as lots

one (1), two (2), and three (3), in square nine hundred and thirty-nine (939), in said city, and which said pieces or parcels of land are also sometimes designated and described as lots four (4), five (5), and six (6), in said square, according to a so-called subdivision thereof, recorded in Liber "C. H. B.," at folio 41, of the records of the surveyor's office for the District of Columbia, and to recover possession of an undivided one-fourth (¼) part of that certain piece or parcel of ground in said square sometimes designated and described as lot twenty (20) and sometimes designated, described, and known as lot three (3), in accordance with the said so-called subdivision, the piece or parcel of ground composing the said four lots herein referred to and described being the southwest part of said square and having a frontage of 115 feet 10¾ inches on North "B" street by a depth of 186 feet 2 inches, fronting on East 9th street; of which described parts of the said lots and premises the plaintiff was heretofore, to wit, on the 28th day of November, A. D. 1890, lawfully possessed when the defendant, who is now in actual possession and occupation of the said lots and premises, entered upon the same and thereupon unlawfully ejected the plaintiff, and thenceforward unjustly detained and still detains the same from the plaintiff, and the plaintiff claims possession of the said described parts of the said lots and premises and appurtenances, together with the costs of this suit.

4 The plaintiff further sues the defendant for that the defendant heretofore, to wit, on the said 28th day of November, A. D. 1890, unlawfully entered each and all of the said certain pieces and parcels of land situated in the said city of Washington, in the District of Columbia, sometimes known, designated, and described as lots twenty (20), one (1), two (2), and three (3), in square nine hundred and thirty-nine (939), and sometimes otherwise known, described, and designated as lots three (3), four (4), five (5), and six (6), in said square, according to a so-called subdivision thereof, recorded in Liber "C. H. B.," at folio 41, of the land records of the surveyor's office for the District of Columbia, the piece or parcel of ground composing the said four lots herein referred to and described being, as aforesaid, the southwest part of said square and having a frontage of 115 feet 10¾ inches on North "B" street by a depth of 186 feet two inches, fronting on East 9th street, and ejected the plaintiff and has continued to keep the plaintiff ejected and expelled from the said described lots and premises, in which said lots, sometimes known, designated, and described as lots one (1), two (2), and three (3), as aforesaid, and otherwise known, designated, and described as lots four (4), five (5), and six (6), according to the said so-called subdivision, as aforesaid, the plaintiff claims an undivided one-fifth (⅕) interest; in which said lot sometimes known,
4 designated, and described as lot twenty (20) and sometimes known, designated, and described as lot three (3), according to said so-called subdivision, the plaintiff claims an undivided one-fourth (¼) interest, and the said defendant has since the said 28th day of November, A. D. 1890, received the rents, issues, and profits thereof, to wit, of the value of one thousand dollars ($1,000), whereby

the plaintiff has lost the said rents, issues, and profits, of great value, to wit, of the value of one thousand dollars ($1,000), and the plaintiff sues to recover the said rents, issues, and profits and costs of this suit.

A. S. WORTHINGTON,
J. J. DARLINGTON,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

A. S. WORTHINGTON,
J. J. DARLINGTON,
Attorneys for Plaintiff.

Plea to Second Amended Declaration.

Filed October 31, 1896. John R. Young, Clerk.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY
vs.
AARON BRADSHAW. } At Law. No. 32181.

The defendant for plea to the plaintiff's second amended declaration says—

"He is not guilty as alleged."

JOHN RIDOUT,
Attorney for Defendant.

Replication.

Filed May 8, 1891.

In the Supreme Court of the District of Columbia.

N. B. ASHLEY, Plaintiff,
v.
AARON BRADSHAW, Defendant. } No. 32181. Law.

The plaintiff joins issue upon the defendant's plea to his second amended declaration.

J. J. DARLINGTON,
Attorney for Plaintiff.

Memorandum.

June 17, 1897.—Verdict for plaintiff for possession and one cent damages.

5 *Memorandum.*

August 12, 1897.—Motion for new trial continued until October term and April term prolonged thirty days to settle bill of exceptions.

In the Supreme Court of the District of Columbia.

THURSDAY, *Oct.* 14, 1897.

The court resumes its session pursuant to adjournment—McComas, justice.

NEHEMIAH B. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 32181.

This cause coming on to be heard without argument, it is by the court ordered that the motion for a new trial of this cause be, and hereby is, overruled; therefore it is considered that the plaintiff recover against said defendant possession of an undivided one-fifth part of each of several pieces or parcels of land situated in the city of Washington, in the District of Columbia, sometimes designated and described as lots one, two, and three, in square nine hundred and thirty-nine, in said city, and which said pieces or parcels of land are also sometimes designated and described as lots four, five, and six, in said square, according to a so-called subdivision, recorded in Liber "C. H. B.," at folio 41, of the records of the surveyor's office for the District of Columbia, and to recover possession of an undivided one-fourth part of that certain other piece or parcel of ground in said square sometimes designated and described as lot twenty and sometimes designated, described, and known as lot three, in accordance with the said so-called subdivision, the piece or parcel of ground composing the said four lots herein referred to and described being the southwest part of said square and having a frontage of 115 feet 10¾ inches on North "B" by a depth of one hundred and eighty-six feet 2 inches, fronting on East 9th street, and one cent damages, together with the costs of suit, to be taxed by the clerk, and have execution thereof.

Appeal by Defendant and Order for Citation.

Filed October 18, 1897. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

N. B. ASHLEY
vs.
AARON BRADSHAW. } At Law. No. 32181.

The clerk will note an appeal to the defendant from the judgment against said defendant entered in this cause on the 14th day of October, A. D. 1897, and will issue citation to the plaintiff as appellee.

JOHN RIDOUT,
Attorney for Defendant.

6 In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY
vs.
AARON BRADSHAW. } At Law. No. 32181.

The President of the United States to Nehemiah B. Ashley, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in clerk's office of the supreme court of the District of Columbia on the 18th day of October, 1897, wherein Aaron Bradshaw is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 18th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this — day of ——, 189-.

—— ——,
Attorney for Appellee.

[Endorsed:] Don't copy.* No. 32181. Law. Nehemiah B. Ashley *vs.* Aaron Bradshaw. Citation. Issued Oct. 18, 1897. Served cop- of the within citation on —— ——. —— ——, marshal. Service accepted Oct. 20, '97. J. J. Darlington, for pl'ff. John Ridout, attorney for appellant.

Memorandum.

October 29, 1897.—Appeal bond filed.

In the Supreme Court of the District of Columbia.

WEDNESDAY, *November* 3, 1897.

The court resumes its session pursuant to adjournment—McComas, justice.

NEHEMIAH B. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 32181.

The bill of exceptions taken during the trial of this cause and submitted to the court on October 30, 1897, was this day signed and sealed and made a part of the record of this cause, *nunc pro tunc.*

[* In pencil in copy.]

1893 6

Bradshaw
vs
Ashley

page 7a to

North

North C Street.

N 8 11	N 9 12	N 10 13	N 11 14								
57.11	57.11¼	57.11¼	57.11								
75	102.9	102.9	75								
N 7 10			N 12 15								
57.7		27.10	55.7								
N 6 9			N 13 16								
57.7			55.7								
N 5 8			N 14 17								
57.7			55.7								
N 4 7			N 15 18								
57.7			55.7								
N 3 6			N 16 19								
57.7			55.7								
N 2 5		27.10	N 17 20								
57.7			55.7								
N 1 4	N 20 3	N 19 2	N 18 X 1								
75	102.9	102.9	75								
57.11	57.11¼	57.11¼	57.11								

9th Street East.

10th Street East

North B Street

South

7 *Bill of Exceptions.*

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 32181.

Filed Nov. 3, 1897. J. R. Young, clerk.

Defendant's case and bill of exceptions.

Be it remembered that at the time of the trial of this case before the Honorable Louis E. McComas, presiding justice, and a jury regularly empanelled and sworn to try the issues joined between the plaintiff and the defendant herein, the plaintiff and defendant gave to the court and jury the following testimony and none other, as follows, to wit:

Plaintiff's Evidence.

JOHN STEWART, a witness sworn and examined on behalf of the plaintiff, testified in substance as follows:

As an assistant to the officer in charge of public buildings and grounds, I am in charge of the Government or other documents of the late commission of public buildings and grounds of Washington city, my office being room No. 22, in the War Department. I took charge of these documents in August, 1876, since which time I have held my present position. I have all the proceedings of the three commissioners who were appointed to lay out the city of Washington, except one volume which was missing before I took charge of the office, and I have charge of a number of the original plats of squares in the city of Washington—not all of them.

The witness here produced the original certificate of division of square 939; which certificate was in the words and figures following:

(Here follows diagram marked p. 7*a*.)

Square 939.

Divided 13 October, 1792.

Copy delivered 13th October, 1792.

Received to be recorded and same day was recorded in Square Book No. 3, folio 939, one of the square records for that part of — Columbia which lies within the State of Maryland.

JOHN M. GANTT, *Clerk.*

The commissioners and George Walker, the original proprietor of this square numbered nine hundred and thirty-nine, in the city

of Washington, bounded on the north by North C street, on
8 the east by East 10th street, on the south by North B street, and on the west by East 9th street, have agreed on the division thereof in manner following, to wit:

The lots numbered one, two, three, ten, eleven, twelve, thirteen, fourteen, fifteen, and twenty are to remain to the said George Walker; and the lots numbered four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, and nineteen are to be subject to be sold agreeably to the deeds in trust concerning the lands in the said city.

Witness our hands this 13th day of October, 1792.

D. STUART,
DANIEL CARROLL,
Commissioners.

Witness:
I. BRIGGS.

GEORGE WALKER.

This certificate was offered in evidence by counsel for the plaintiff, counsel for the defendant stating they had no objections to the plat, but did object to the pencil memorandum thereon.

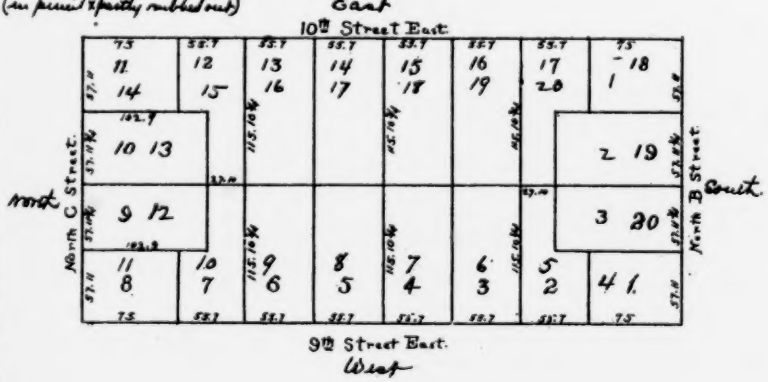
Witness resuming:

Fifteen or eighteen years ago I produced before Judge Wylie in court here some papers from my office upon which there was a lot of pencilling, and the Judge told me that I ought to clean the papers up before bringing them to court. Ever since then when I was subpœnaed to produce a paper if there was any pencilling on it I rubbed it off. When this suit was opened up I rubbed off the pencil numbers on this original plat of square 939. Afterwards one of the counsel for the plaintiff complained of this. Thereupon, by direction of Colonel Wilson, who was then in charge of the office, I restored the pencil figures on the plat and appended my affidavit explaining the circumstances. The pencil numbers were on square 939 in the register of squares also. I do not remember when my attention was first called to the pencil numbers on square 939. This particular plat has been in my custody since 1876, and I saw it in the office in 1873, when I was doing some work in the same room. I do not remember whether the pencil numbers were there then or not. I did not put them there, and did not see anybody else do it. There was a man named Boyd or Boise or something like that who was working in the city surveyor's office and was preparing a Washington City directory, who came to the office one day and got the register of squares and certificates of division of squares to compare with his book. I do not know whether the pencil numbers were there before that, and would not swear they were done by him. This certificate and the other papers in my charge since 1875 have been kept locked up and the key was locked up in a particular place. We were not in the habit of letting people go in there and handle these papers without watching them.

Bradshaw vs. Ashley } page 9a

(Strong numbered (in pencil & partly rubbed out)

SQUARE 939.



9 Thereupon counsel for the plaintiff again offered in evidence said plat of square 939 and the accompanying certificate of division. It was objected to by counsel for the defendant on the ground that the original division of the commissioners was in ink, as shown by the original records, some of which were not yet in evidence; also upon the ground that the transmutation of the legal title could not be shown by a mistake arising from any pencil numbers made upon the original plat of square 939, and, finally, that under the declaration in this case the plaintiff cannot claim the record title under the pencil numbers.

The court admitted the paper in evidence, subject to whatever ruling the court might make at the close of the proof, and the paper, including the endorsement, was accordingly read in evidence and exhibited to the jury by counsel for the plaintiff. The plaintiff's counsel also read in evidence to the jury (defendant's counsel not objecting) an affidavit which was appended to said certificate, a copy of which affidavit is hereto appended, marked Exhibit A, and made part hereof.

Witness resuming:

I have the registries from my office in which the squares are recorded. There are three of them. I have here volume two, in which square 939 is recorded.

Witness here produced register number two, purporting to contain in regular order registry of squares, beginning with number 559 and ending with number 1128. It was then stated by the court, with the acquiescence of counsel on both sides, that everything relating to pencil numbers should go in, subject to the same objection and exception, without repetition of the same.

Witness resuming:

The entry in this book, on page 939, also has both ink and pencil numbers. I have no personal knowledge as to how either the pencil or the ink numbers came there. My attention was first called to the fact that there are two sets of numbers on this square when counsel came to the office to examine the records in this case in connection with this suit. This register number two has been in my custody since 1876. I have kept it locked up in a drawer and the key placed under lock and key every night. When it is brought out for examination I stand by and usually notify every party who takes a look at it to put no pencil marks on it; that has always been my habit. I do not know who put these pencil numbers there.

Thereupon plaintiff's counsel offered in evidence said page 939 in said register number two, defendant's counsel objecting, and the court and counsel on both sides agreeing that it should go in, subject to the same objection as the other plat. Said page was in the words and figures following:

(Here follows diagram marked p. 9*a*.)

10 Bounded on—

The north by C St. north, } Two hundred and thirty-one ft. 9 inc.
The south by B St. north, }
The east by 10th St. east, } Four hundred and eighty-four ft. 10 inc.
The west by 9th St. east, }

As per return dated Sept. 7, 1793.

I. BRIGGS.
BENJ. ELLICOTT.

The commissioners and George Walker, the original proprietor of this square numbered nine hundred and thirty-nine, in the city of Washington, bounded on the north by North C street, on the east by East 10th St., on the south by North B street, and on the west by East Ninth street, have agreed on the division thereof in the manner following, to wit:

The lots numbered one, two, three, ten, eleven, twelve, thirteen, fourteen, fifteen, and twenty are to remain to the said George Walker; the lots numbered four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, and nineteen are to be subject to be sold agreeably to the deeds of trust concerning lands in the said city.

Witness our hands this thirteenth day of October, 1792.

D'D STUART,
DAN'L CARROLL,
Commissioners.
GEORGE WALKER.

Witness:
I. BRIGGS.

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Geo. Walker.		Public.		When sold.	To whom sold.
Lots.	Sq. feet.	Lots.	Sq. feet.		
1	4,343¾	4	6,460		
2	4,871	5	6,460		
3	6,460	6	6,460		
10	5,955¼	7	4,871		
11	4,343¾	8	4,343¾	July 14, 1851.... James Greenleaf.	William T. Baldwin.
12	4,871	9	5,955¼		
13	6,460	16	6,460		
14	6,460	17	4,871		
15	6,460	18	4,343¾		
20	5,955¼	19	5,955¼	July 14, 1851.....	William T. Baldwin.
	56,180		56,180		

Witness resuming:

The notes at the bottom of this page, dated July 14, 1851, were there when I took charge of the book.

I have searched the records of the proceedings of the com-
11 missioners who divided these lands originally two or three times over to see whether there is anything in them giving any directions about how to number the squares. The only directions that I have been able to find are that the surveyors will state the street on each side of the square and the length of the square on that street.

The witness, having stated that he desired to make some explanation and being requested to do so by counsel if it was anything bearing on the case on trial, said that in 1852 Senator Douglas introduced a resolution in the Senate, which was adopted by it, that the document theretofore printed by order of the Senate containing plats of the squares and lots in the city of Washington be bound, and that this document appeared at that time, entitled—

"Maps of the District of Columbia and city of Washington and plats of the squares and lots of the city of Washington. Printed pursuant to resolutions of the Senate of the United States. Washington. Printed by A. Boyd Hamilton, 1852."

Witness resuming:

In this copy of the book there is no pencilling on any of the squares; the numbers are all given in ink in that volume. I have seen a copy of that book in the office of one of the defendant's counsel (referring to Mr. O'Callaghan). In square 939 in that book the lots are numbered in ink. On the first page of the book it appears that it was corrected by Mr. Forsyth, the present surveyor of the city, in 1855; there are a great many lots corrected. I have nothing on record to show the corrections of Mr. Forsyth or anybody; I have searched, but have not found any. This is the statement that I wished to make.

Cross examination:

Certain lots on this plat of square 939 in register of square number 2 are enclosed with pinkish lines. That indicates that the lots within the shading were sold by the United States. The same thing appears on the other squares on the register—invariably when they were sold. In square 939 the lots enclosed in pink shading to indicate that they were sold by the United States comprising ink lots four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, and nineteen. I have no recollection of ever seeing an order of the commissioners to the surveyors as to numbering the lots in the squares. When I was here before I stated that such an order was passed in 1793, but I was mistaken; I had got the matter mixed about the resurveying of the city, and I thought it was included in that, but upon re-examination I found it was not. I have not been able to find any order of the commissioners directing how the squares should be numbered.

Redirect examination resumed:

As to the pencil writing on square 939 in my register number two—I believe the words "wrong number" have been written there

and then an attempt made to rub them out. I do not know
12 who put the words there or who tried to rub them out. I do remember doing it under Judge Wylie's supposed order. As to the words written in pencil around this square—"north," "east," "south," "west"—I did not put them there and I do not know who did. So far as I know, that pencil writing has been there since I have had the custody of the book. There is another place that looks like an erasure on this page and I believe that was done by me. I believe that pencilling was by me; "north," "south," "east," "west"—these words are in my handwriting. I suppose I did that at the time I was correcting the penciling on the certificate of division. I do not remember rubbing them out, but I put that on there—it is my handwriting. I suppose I was finishing it according to the certificate of division—the penciling of it.

As to square 749 in this book, I do not know whether it is in the same condition it was when the book came into my custody. I did not write the words "north side" and "south side" on that page and I do not know who did.

Thereupon counsel for the plaintiff exhibited register of square 749 to the jury and it was as follows:

(Here follows diagram marked p. 12a.)

As per return dated June 12, 1795.
(Signed) THOMAS FREEMAN.

The commissioners and Daniel Carroll of Duddington, original proprietorr of this square, numbered seven hundred forty-nine, in the city of Washington, have agreed that the whole of the same square is subject to be sold agreeably to the deed of trust concerning land in the said city.

Witness our hands this twenty-seventh day of September, in the year one thousand seven hundred and ninety-seven.

(Signed) GUST'S SCOTT,
WILLIAM THORNTON,
ALEX. WHITE,
Commissioners.

Witness-:
W. BRENT.
JAMES K. DERMOTT.

DANIEL CARROLL OF DUDDINGTON.

There is no certificate of square 749 in my custody, and I do not know where it is.

Cross-examination resumed:

In this square, 749, the pink tinging includes each lot and the whole square. According to the certificate of the commissioners here, the whole square went to the United States. On the opposite

12a

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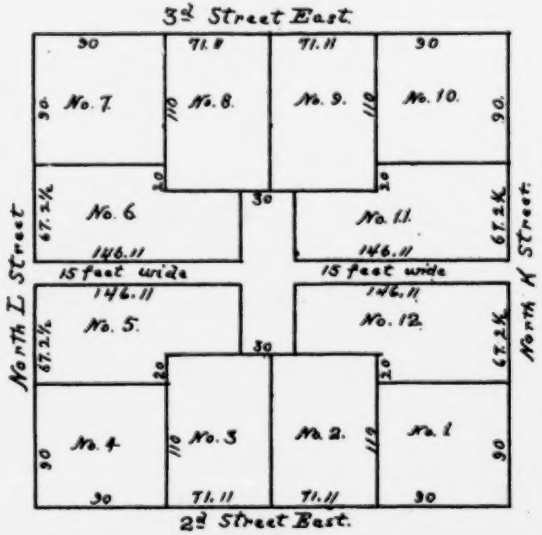
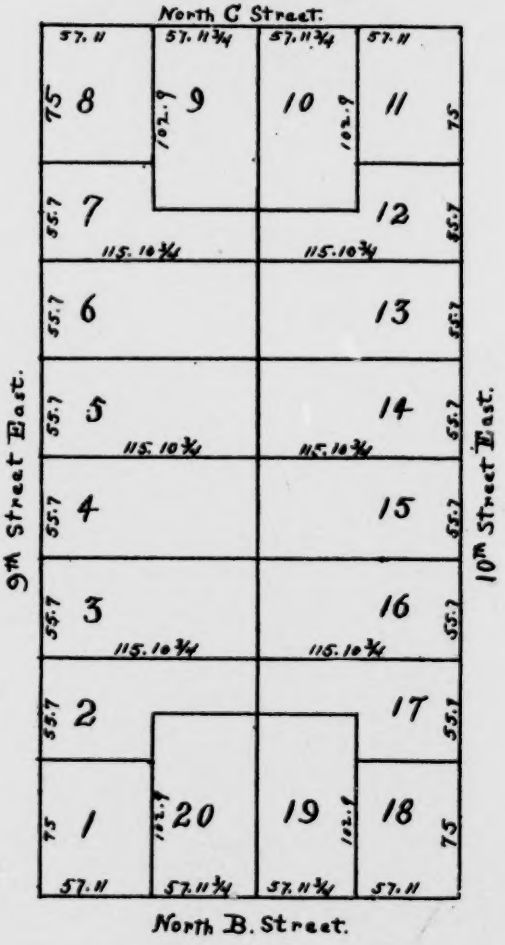
SQUARE 749.



Bounded on (The North by L street North) Three hundred and
( )
(The South by K street North,) twenty nine feet
( )
(The East by Third street E.) five inches.
( )
(The West by 2nd street East.)) Three hundred and
twenty three feet, ten
inches.

Bradshaw Ashley } Page 13a

Square No. 939.



page is square 748, and according to the pink tinging on
13 that square lots one, two, three, four, five, six, seven, fifteen, and sixteen went to the United States. In square 738, in this book, the whole square is tinged, and it all went to the United States. Throughout this book where property was allotted to the United States on the division of squares, the lots that went to the Government are enclosed within these colored lines. The certificate of the commissioners shows that the lots within the colored lines went to the United States.

At this point defendant's counsel exhibited to the jury square number 939 as it appears in the Senate book referred to by the witness in the explanation which he had made during his direct examination. Said square appears in said book as follows:

(Here follows diagram marked p. 13*a*.)

Witness resuming:

Throughout the original certificates of division of different squares as contained in the registries numbered one, two, three the statement as to the division of numbers of the lots and squares is in ink in every case. There are a few squares that were never divided. Of course, the division of them was not given. There are other squares where in the original division lot numbered one is not at the southeast corner.

At the request of defendant's counsel the witness here turned to squares numbered respectively seventy-one (71), 215, 582, 1012, 1033, northwest of 1033, 1080 and south of 1080, and the same as recorded were exhibited by defendant's counsel to the jury as indicating that in other squares than 939 the numbering of the lots did not begin in the southeast corner.

Witness resuming:

In square 71, lot 1 is the northeast lot; in square 215, lot 1 is at the northeast corner; in square 749, lot 1 is at the northeast corner; in square 582, lot 1 is at the northeast corner; in square 939, lot 1 is in the southwest corner; in square 1012 lot 1 is in the southwest corner; in square 1033, lot 1 is in the northeast corner; in square northwest 1033, lot 1 is in the northeast corner; in square 1080, lot 1 is the whole west side of the square; in square south 1080, lot 1 is the northeast half of the square.

Said squares 71, 215, 582, 1012, 1033, northeast of 1033, 1080, and south of 1080 as they appear in said register, are shown upon paper marked Exhibit B and hereto appended.

The man who came to my office for data to publish a Washington city directory was John J. Bogue. He and a man named Faehtz published plats of the city in three volumes. In the early part of 1874 I entered the service of the United States, first doing duty in General Babcock's office, corner 21st street and Pennsylvania avenue. General Babcock was then in charge of public buildings and grounds, and he sent me to the office in the Capitol

in the early part of 1874, and in 1876 I took charge of the
14 records. At the time this man went there I had not charge of the records; consequently I did not look after them. My impression is that this publication is dated in 1875 or 1876. It was prior to its being published that he was in that room and had a part of the book, perhaps two or three hundred loose leaves, correcting them with these records in the office. He was examining the certificates of division of squares and the registers with the work that he had prepared. No person was looking after him, what he was doing. I merely referred to it—that he had the opportunity if he was so inclined. I do not know whether he put the pencil marks there or not. I might have seen these pencil marks before I noticed them when one of plaintiff's counsel came to see me, but I did not take any particular notice of it, and my first knowledge of them was when plaintiff's counsel came up there a few years ago about this case.

It was Mr. W. H. Acker and Mr. William John Miller who came to my office with that Senate book. I looked at it then and saw the signature of Mr. Forsyth in front of it. That drew my attention particularly to it. I then called at Mr. Acker's office and looked it over.

Redirect examination:

I did not say that in every case in the register the shaded lots are those that went to the United States. I say that generally all of them went. Not only the lots, but some whole squares were shaded that way. In square 825 only lots numbered from one to four are shaded. By the certificate of division below that square in the register I see that lots one and four are to remain to "the said William Prout," and lots numbered two and three are subject to be sold agreeably to the deeds conveying the lands in said square. In that case the shaded lots——

(This page, side folio 36, should connect with side folio 39.—PRINTER.)

At the request of the commissioners appointed under the act of Congress entitled "An act for establishing the temporary and permanent seat of the Government of the United States," the following square in the city of Washington was recorded the 13th day of October, 1792:

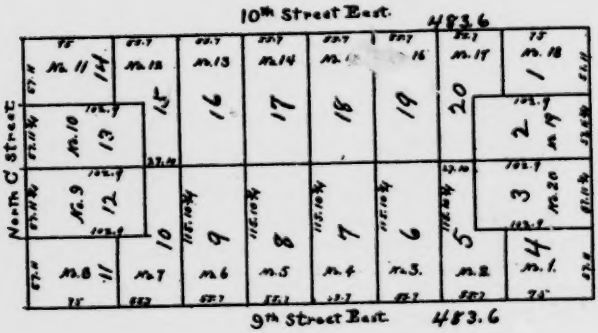
(Here follows diagram marked p. 14*a*.)

The commissioners and George Walker, the original proprietor of this square number nine hundred and thirty-nine, in the city of Washington, bounded on the north by North C street, on the east by East 10th street, on the south by North B street, and on the west by East 9th street, have agreed upon the division thereof in manner

14a

Bradshaw vs. Ashley } page 37

939.



following, to wit: The lots numbered one, two, three, ten,
15 eleven, twelve, thirteen, fourteen, fifteen, and twenty are to remain to the said George Walker, and the lots numbered four, five, six, seven, eight, nine, sixteen, seventeen, eighteen, and nineteen are to be subject to be sold agreeable to the deeds in trust concerning the land in the said city.

Witness our hands this thirteenth day of October, A. D. 1792.

DAVID STUART,
DANIEL CARROLL,
Commissioners.
GEORGE WALKER.

Witness:
I. BRIGGS.

are the ones that go to the owner, and the United States takes those not shaded. I thought I had the certificate of division to that square, but I have not. In that case the shade was put on the wrong side, but that is how the lots went, of course. On looking at the record of square 776 in this register I see that the shaded lots, one, two, nine, ten, eleven, and twelve, are to remain to "the said Notley Young" and the unshaded lots, three, four, five, six, seven, and eight, are subject to be sold. That has been corrected by scratching out "Notley Young" and writing the word "public" and by scratching out the word "public" and writing in "Notley Young." I corrected that myself. I was ordered to make the correction when I saw that it was necessary. Wherever I saw a mistake I was ordered to correct it. General Wilson gave me this order. I made this change about two years ago. I did it to make the record conform to the certificate of division of squares.

On my cross-examination I think I gave the numbers of all the squares that I could find that were numbered in some other way than beginning in the southeast corner. I went hurriedly through the registers, beginning at number 1 and going through to the highest number, 1149, and those that I was examined about by defendant's counsel are the only ones that I came across that were irregular in their numbering. I would not say that there are not more; there may be. There are ten of these exceptional squares, including 939.

There are about two hundred of the certificates of division missing. I do not know where they went or where they are.

At this point counsel for plaintiff read to the court and jury the act of Congress of January 12, 1809 (2 Stat. at Large, 511), section seven of which is as follows:

"All records of the division of squares and lots heretofore made between the public and original proprietors or which are authorized by this act, shall be kept in the office of the surveyor of the city, and all transcripts therefrom certified by him shall be evidence equally valid with certified transcripts from the land records of the Districts, for the conveyance of land in the county of Washington."

Also section 472 of the Revised Stat-es of the United States relating to the District of Columbia, reading as follows:

"The office of the surveyor of the District is the legal office
16 of the record of the plats of all property in the city of Washington, and all records of the division of squares and lots made between the public and original proprietors, or otherwise authorized by law, shall be kept in said office."

Also section 473 of the R. S. U. S, relating to the District of Columbia, which is a transcript of section seven of the act of 1809.

JAMES H. FORSYTH, on behalf of the plaintiff, testified as follows:

I am 54 years of age and have lived in Washington since 1850. I am a clerk in the office of the surveyor of the District. The surveyor, William Forsyth, is my father. He was elected surveyor in 1857 and has been surveyor off and on ever since that time, with some short breaks. I have been in the surveyor's office off and on since 1858—considerably over half the time. I have been there continuously, I think, since 1881. In the surveyor's office are recorded original subdivisions of land in this District. Each subdivision bears what purports to be the signature of the surveyor. From the books of the office I have become acquainted with the signatures of the different surveyors as they appear in those books. The first surveyor was Nicholas King; the next, Robert King; the next, I think, Mr. Elgar; the next, F. C. De Kraft. According to the records De Kraft was surveyor in 1822 and for possibly eight or ten years thereafter. There are in the surveyor's office what purport to be the original records of the division of squares in Washington under this law of 1809. I mean to say that there are four books there which have been treated by examiners of titles as the original records of the division of property in the different squares in the city of Washington. That office has been the place where the searchers have searched since I first went there in 1858. I remember William H. Ward, William Reddin, and others. I have seen Mr. Rideout there frequently. I find Mr. De Kraft's handwriting in the subdivision book, I think, from 1822 to 1830. I have become so acquainted with his handwriting as to form, I think, an opinion whether certain things, including figures, are or are not in his handwriting. There is a book in the office which contains several squares which conform to a large extent to De Kraft's handwriting in the subdivision book. That book purports to contain all the squares. I have here record of squares number three from the surveyor's office. It has been in the office ever since I went there in 1858. To my best recollection, it is now in the same condition that it was then; there is no date on it. It has been rebound; the binding and the cover are practically new. It is marked on the outside "Records of squares" and following that the figure "3," and following that the figures "650-975." It begins with square 649 and ends with square 975. What is on the page in this book entitled page 939 is the record in the surveyor's office of square 939 in this city. So far as that page is concerned, it is in the same condition now that it was when I first became acquainted with the records of the surveyor's office.

17 Counsel for plaintiff being about to offer said page 939 in evidence, the witness testified as follows, in reply to questions propounded by defendant's counsel:

I do not know that these records of squares in the surveyor's office are simply copies of the original reports in the office of the commissioner of public buildings and grounds. I know that there has been correspondence between my father, the surveyor, and the Chief of Engineers, in which my father has claimed that his office is legally entitled to the original records, which are in the office of the Chief of Engineers. Of my own knowledge I don't know that these records of squares in the surveyor's office are mere copies.

At this point defendant's counsel suggested that the surveyor himself should be put upon the stand before his records were put in evidence, but the court held that the evidence should be allowed to go in, subject to exceptions, until after both of the surveyors had been examined.

Thereupon said page 939 of said record of squares number three was offered in evidence and exhibited to the jury by plaintiff's counsel, and the same is in the words and figures following:

Direct examination resumed:

I think the first time my attention was called to the fact that there were two sets of numbers on this square, one in pencil and one in ink, was at the last trial of this case. I cannot say from my personal knowledge whether or not they have been there all the time. The record of square 749 in this book, so far as I know, is in the same condition it was when I first went into the office.

Plaintiff's counsel here offered in evidence from said record of squares page 749, containing square 749. Defendant's counsel stated that they objected to it for "obvious reasons," but the court ruled that it should be admitted in evidence for the time being, subject to exception.

Thereupon said page 749 was read in evidence for plaintiff's counsel and exhibited to the jury, and it is in the words and figures following:

Square 749, city of Washington.

Bounded on	the north by L street north. the south by K street north. the east by 3d street east. the west by 2d street east.	Three hundred and twenty-nine feet five inches; three hundred and twenty-three feet ten inches.

As per return dated June 12, 1795.

JAMES R. DERMOTT.

August 17, 1797.

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18 The commissioners and Daniel Carroll of Duddington, original proprietor of this square, numbered seven hundred and forty-nine, in the city of Washington, have agreed that the whole of the said square is subject to be sold agreeably to the deeds of trust concerning lands in the said city.

Witness our hands this twenty-seventh day of September, in the year one thousand seven hundred and ninety-seven.

GUST'S SCOTT,
WILLIAM THORNTON,
ALEX. WHITE,
Commissioners.

Witness-:
W. BRENT.
JAMES R. DERMOTT.

DANIEL CARROLL OF DUDDINGTON.

At the request of the commissioners appointed under the act of Congress for establishing the temporary and permanent seat of the Government of the United States, the following square in the city of Washington was recorded the 12th day of March, 1798.

(Here follows diagram marked p. 18*a*.)

Witness resuming:

There is a book in the surveyor's office which contains several squares purporting to be made, I think, by Mr. De Kraft.

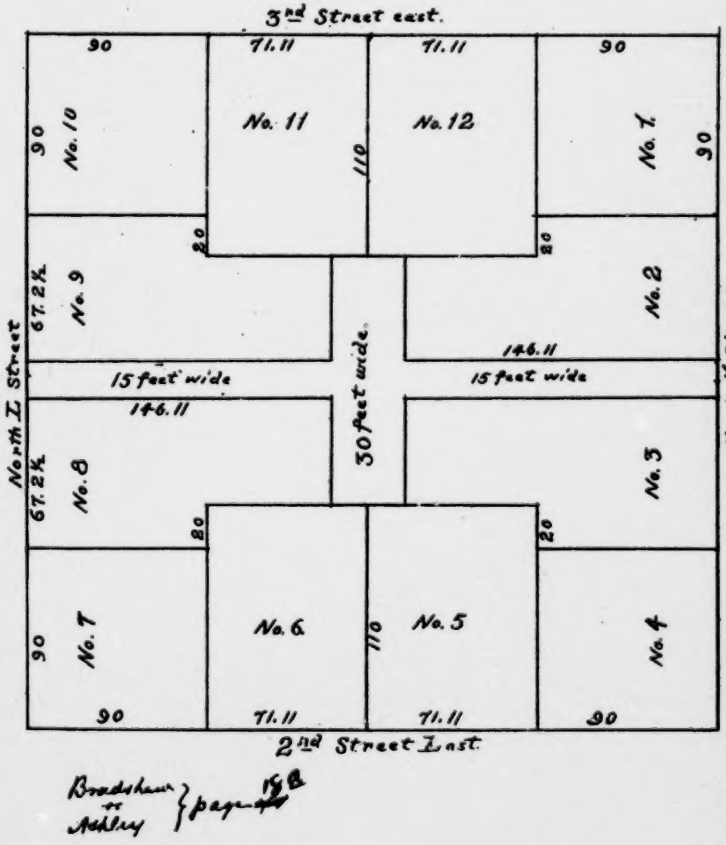
This book was produced and *and* identified by the witness. The use of it in evidence was objected to by counsel for the defendant. Plaintiff's counsel stated that they had in court a witness who they proposed to examine further on, who would produce from the office of the Commissioners of the District documents showing that this De Kraft book was prepared by order of the mayor and common council of Washington; that he was authorized to prepare it and did prepare it in 1816.

Defendant's counsel objected to the use of the book for any purpose upon the ground that it would appear during the trial that long before 1816 the United States had parted with its title to the lots in controversy, and that plaintiff's counsel were endeavoring to show by this plat book of De Kraft's that the Government did not have title to property which on the original division by the commissioners went to it.

The court ruled that the book might be used in evidence for the present, subject to exception, until enlightened by the testimony of the two surveyors.

Witness resuming:

This book purports to have been made by Mr. De Kraft. When I first became cognizant of it, it was bound together in its present form. On looking at the record of square 939 in that book it ap-



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939

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} page 5 of 19

pears to be in the same condition it was when I first went
19 into the office. From the impression made on my mind by what is signed by Mr. De Kraft in the N. K. book I am led to believe that these figures in square 939 in the plat book were made by De Kraft. The general impression on my mind is that the words "North C street" in other writing around this square 939 in the De Kraft book was done by Mr. De Kraft, and that opinion is founded upon the records prepared by Mr. De Kraft which I find in the surveyor's office. In my opinion the whole of that writing and lettering in regard to square 939 was done by De Kraft, including the names of the streets.

Thereupon plaintiff's counsel offered in evidence the record of square 939 in said De Kraft book, the court admitting it subject to the defendant's exception, and the same was exhibited to the jury by plaintiff's counsel. It is in the words and figures following:

Witness resuming:

That square is upside down in this book. There is nothing exceptional in that, as I find that to be the case also with squares 937, 944, 938, 940, 941. This book has been rebound since it was in the surveyor's office. I am pretty positive when I first saw it.

Thereupon plaintiff's counsel offered in evidence from said De Kraft book the record of square 749 therein, stating that they proposed it for the purpose of showing that that square, too, was upside down, and that the numbering of the lots was begun in the southeast corner. The same was admitted over the objection of counsel for the defendant and an exception taken, which was duly noted on the minutes of the court before the jury retired.

(Here follows diagram marked p. 19*a*.)

Cross-examination:

Everybody has access to the records of squares in the surveyor's office. Anybody might put pencil numbers on any of those squares while we were engaged in something else. We do not watch people who come in there to examine titles and the records of squares if they are well known to us, but if strangers come in we would be pretty apt to see what they are doing. If strangers come in we might be attending to something else. Anybody coming in there could number with a pencil any lot or square he pleases by having our attention diverted in some other direction.

As to the use made of the De Kraft book by examiners of titles, I cannot say, except possibly for general information. It was consulted sometimes. There might be a difference in distances and figures; there might be a doubt, and I have shown the De Kraft book in cases of that kind. I would show it when asked for in such cases. Probably the information might not be in this book. In ordinary examinations of title, with reference to the division of

squares, the examiners would consult the original book, one
20 of these large registers, whichever book contained the square in which they were interested.

Redirect examination:

When strangers come in and ask to see the register we show it to them, but somebody is generally keeping a lookout after them. I generally make it a rule to watch a man, a stranger, at least after he has gone out to look at the page he was working on, so as to see whether anything had been done to it. We have not in the surveyor's office any of the original certificates of division of squares between the United States and the original proprietors.

WILLIAM F. MEYERS, a witness called and examined on behalf of the plaintiff, testified as follows:

I am the assistant to the secretary of the District of Columbia and have held that position for six years. I have made a search for papers relating to work done by Mr. De Kraft in regard to the squares of Washington and I think I have found the original of the laws passed in 1816 and 1817 in relation to this matter. The custodian by law of these papers is the secretary of the District of Columbia; but I am the actual custodian. I have been doing this work for the last six years for the secretary. I have also found among these papers a letter dated October 8, 1816, purporting to have been written by James H. Blake, who was then mayor of Washington, to the board of aldermen and common council, and also what purports to be an act of the common council and board of alderman in relation to this matter. There is a public compilation of the ordinances of page 61 of this book, which I produce. This book has been used in the Commissioners' office and by members of the bar who came there to borrow it for use in court. I have often been called upon to read it in court. I am in charge of the ordinances, originals and copies. This book is used in the office of the Commissioners as containing all the ordinances in force.

I have not been able to find the original of the resolution which appears in this book on page 61, dated October 12, 1816. I have searched all imaginable places in the vault of our building and spent about two weeks' time. I made a thorough search in all the places where these old papers are kept and was not able to find the original of this resolution of October 12, 1816, or the original of the resolution of March 21, 1817, authorizing an advance of $200 to Mr. De Kraft.

It was here conceded by counsel for both parties that if J. Holdsworth Gordon was sworn as a witness in this case he would testify that he is a grandson of the late James H. Blake, who was mayor of Washington from 1813 to about 1817; also that the signature of Mayor Blake to the ordinance in question is the genuine signature of said Mayor Blake, and that this admission might be used instead of calling Mr. Gordon as a witness.

Thereupon counsel for the plaintiff offered in evidence said mes-

sage of Mayor Blake, dated October 8, 1816, and also the
21 resolution passed by the board of alderman and common council of the city of Washington on the 12th of October, 1816, from the book and also from the original.

To each and all of said offers counsel for the defendant objected; which objection was overruled by the court; to which ruling counsel for the defendant excepted, each of which exceptions was then and there duly noted on minutes of the court before the jury retired.

Thereupon plaintiff's counsel read in evidence to the jury said message and said resolution, and they are in the words and figures following:

"WASHINGTON CITY, *October* 8, 1816.

To the board of alderman and board of common council:

The graduation of the streets is yet a subject of considerable complaint. A number of errors have been committed, to the injury of individuals as well as the corporation.

The surveyor of this corporation, duly appointed as such, has been unable to act, not having the necessary book of squares, &c., to act from.

It is a serious grievance that the surveyor appointed by the superintendent of the city withholds this necessary information from us. Therefore the corporate authorities will be either compelled to appoint the public surveyor, also surveyor of the corporation, or to procure at the expense of the corporation a book of squares for the city surveyor, to be kept at the council chamber, and as I suppose they will not submit to be driven into the appointment of any individual, I submit the propriety of procuring a book of the squares, &c. One competent gentleman told me he would make a correct copy for $200 or $250. At any rate, the expense would not exceed $300.

The superintendent says that any person authorized by the corporation may take a copy.

Enclosed is a letter from John Law, Esquire, on the subject of the digest of the laws of this corporation. The plan he has adopted I highly approve of, and when completed it will present a methodical and correct compendium of the permanent laws of the corporation.

The work can best be examined by a committee and its merits reported to your respective boards. He will attend in person and make any necessary explanations.

Permit me to suggest the expediency of authorizing a few lamps in the most public parts of this city. Strangers who visit here and who are frequently compelled to travel about in the night would be more pleased with the metropolis, of course complain less, and our city by such means would acquire more popularity.

I beg leave to suggest the necessity of revising the act for the measurement of lumber and the propriety of providing by law for the measurement of houses.

JAMES H. BLAKE."

22 And thereupon counsel for plaintiff (subject to the aforesaid exception) read the following:

"*Resolution Respecting the Graduation of Streets.*

Resolved by the board of aldermen and board of common council of the city of Washington, That the mayor be, and he is hereby directed, to employ some skillful and competent person to make a copy of the squares and lots of this city, with their dimensions and contents, including the graduation of streets, and also of such books as he shall deem indispensable in the execution of the duties of the office of the surveyor of the city of Washington: *Provided*, that the expense thereof shall not exceed three hundred dollars.

Approved October 12, 1816."

(The book of ordinances does not give the signatures of the heads of the two boards of common council and of the mayor, but the original resolution does.)

And the counsel for said plaintiff read in evidence to the jury (subject to the aforesaid objection and exception) from said book, on page 617, an act of the board of aldermen and board of common council and duly approved March 21, 1817, authorizing the said mayor to advance to Cornelius F. De Kraft, out of any money in the treasury, etc., the sum of $200, being a part of the compensation allowed by a resolution of the council passed the 12th day of October, 1816, for the purpose of making a copy of the squares in the city and the graduation of streets.

Approved March 21, 1817.

C.

And counsel for plaintiff also read in evidence to the jury (subject to the objection and exception to the overruling of said objection, which objection was noted on the minutes of the court) from page 619 of said printed publication and ordinance, approved May 26, 1817, in the following words and figures:

"An act making a further appropriation for Frederick Cornelius De Kraft for copying the squares and graduations of the city of Washington.

Be it enacted by the board of aldermen and board of common council of the city of Washington, That for compensating Frederick Cornelius De Kraft for copying the squares and graduations of the city of Washington, the sum of one hundred dollars be, and the same is hereby appropriated, to be paid out of the general account, on completing and delivering of the copies hereinto before mentioned to the mayor of this city.

Approved May 26, 1817."

Thereupon the witness stated that he had found the original of an ordinance dated July 11, 1818, signed by Benjamin G. Orr, mayor

of Washington. Thereupon counsel for the plaintiff offered
23 said ordinance in evidence to the jury. Counsel for the defendant objected and the court overruled said objection, and counsel for the defendant excepted to said ruling; which exception was then and there noted on the minutes of the court before the jury retired. After the noting of said objection and exception, counsel for the plaintiff read in evidence said ordinance of July 11, 1818, which is in the words and figures following:

An act to compensate F. C. De Kraft for copying the squares of the city of Washington, and to repeal the act therein mentioned.

SECTION 1. *Be it enacted by the board of aldermen and board of common council of the city of Washington*, That in addition to the sum already paid F. C. De Kraft for copying the squares of the city of Washington for the use of the corporation thereof there be allowed and paid him the further sum of one hundred dollars, which shall be in full compensation for said copies.

SECTION 2. Appropriates the aforesaid sum to be paid out of any money to the credit of the general fund, &c.

SECTION 3. Repeals the act entitled "An act making a further appropriation for Frederick Cornelius De Kraft for copying the squares and graduations of the city of Washington" passed on the 26th day of May, 1817.

(This act is signed by the president of the board of common council and the president of the board of aldermen, and is approved 11 July, 1818, by Benjamin G. Orr, mayor.)

Thereupon the witness produced from the office of the Commissioners of the District a warrant dated August 14, 1818, purporting to be signed by Benjamin G. Orr, mayor; which warrant plaintiff's counsel offered in evidence, together with the receipt appended to it; to which counsel for the defendant objected; but the court overruled said objection; to which ruling defendant, by his counsel, excepted; which exception was duly noted on the minutes of the court before the jury retired.

And thereupon counsel for the plaintiff read to the jury (subject to said objection and exception) said warrant and receipt, which are as follows:

"No. 88. WASHINGTON CITY, 14 *Aug.*, 1818.

General Fund.

To the treasurer of the city of Washington:

Pay to F. C. De Kraft or order one hundred $\frac{00}{00}$ dollars in full of the appropriation made by law, passed on the eleventh day of July, 1818, for his compensation for copying the squares of the city of Washington, and charge the same to the account of the general fund.

BENJ. G. ORR, *Mayor.*

Countersigned by—

WM. HEWITT, *Register.*

$100.00 *dollars.*"

24 Endorsed: "F. C. De Kraft, $100, 14 August, 1818. No. 88. F. C. De Kraft. Bank of Washington, Aug. 14, 1818. Pay the within. Henry Whetcroft, treasurer of the city of Washington."

Witness resuming:

I think that in the examination of official papers in my custody I have become acquainted with De Kraft's handwriting, and especially with his signature. I think I could recognize his handwriting. In my opinion, this is his genuine signature on the back of that order. I have examined the record of square 939 in the book from the surveyor's office called the De Kraft book, and, in my opinion, all the figures and words there relating to that square are in De Kraft's handwriting.

WILLIAM F. MEYERS, being recalled and examined by plaintiff's counsel, stated that he had produced another volume of the printed compilation of ordinances referred to in his previous testimony. From this volume counsel for the plaintiff offered in evidence the ordinance of July 11, 1818, which had already been read in evidence from the original document produced by the witness.

To this counsel for defendant objected; but the court overruled said objection; to which ruling counsel for the defendant excepted; which exception was then and there duly noted on the minutes of the court before the jury retired.

Plaintiff's counsel thereupon read the same in evidence, it being a copy of the original ordinance of the same date.

JOHN STEWART recalled and examined by plaintiff's counsel:

"Q. I want to ask you if you know what book was referred to in the endorsement on this certificate of division of square 939, which you have produced here, where it refers to Square Book No. 3, folio 939, one of the square records, &c."

"A. It is Book No. 2, register of squares, in which this square is recorded, folio 939. As to Book No. 3, I know nothing, only I think there is a book of that number in the office of the surveyor of the city."

"Q. Do you know of any other records of squares in the city of Washington in which square 939 is in Book No. 3, folio 939, at all?"

"A. No, sir."

"Q. Or any number three at all?"

"A. No, sir."

Cross-examination:

There are only two volumes of registers of squares in my office. They have not been bound since they were in the office. They are more worn now but the same binding. Of course, I don't know whether originally they were in one, two, or three volumes. I have prepared under the authority of Colonel Wilson, who was the officer

in charge of public buildings and grounds at the time, a
25 statement of property the title to which is left in the United States. I commenced it two or three years ago. I had prepared a statement relative to the property in the city owned by the Government about four years ago, and, I think, about eight years ago; that was to give an idea of what number of lots belonged to the United States in the city of Washington. I did this under Colonel Wilson's authority. A report of that was made by Colonel Wilson and presented to the Attorney General; the Attorney General sent it to the Senate, and the Senate ordered it printed, and I have a copy of it, and it has remained on the shelves ever since. In preparing that statement I went over the records in the office to ascertain what property went to the Government under the original division, and what disposition had been made of it. In doing this I paid no attention to the pencil numbers or marks at all.

There were a number of pencil marks on these records, which, from time to time, I erased. If any of these pencil marks were pencil-numbered lots I rubbed them out. I don't remember that I did, but expect that I rubbed them off. In making that search I discovered seven or eight squares in addition to square 939 in which the lots were in pencil. I left them because that was after this suit was brought. I do not remember rubbing any pencil numbers off the registers of squares prior to that, and I know I have not since then. There is in my office a record of lots and squares sold to private individuals, and the number of square feet and the date when sold.

Redirect examination:

On looking at the record of square *of* 749, in my register, I find there is a figure "3" there written over lot nine which is not altogether rubbed out. Whoever tried to rub that out did not make a good job of it.

JAMES H. FORSYTH recalled and further cross-examined by defendant's counsel:

On comparing the record of square 939 in the De Kraft book with the record of the same square in Record Book 3 of the surveyor's office I find that the De Kraft book does not correspond with the ink numbers in the record book, and that in that respect it is not a copy. On comparing square 582 as it appears in the De Kraft book with the same square in Record Book 2 of the surveyor's book with respect to the ink numbers of the lot, I find that the De Kraft book is not a copy of the surveyor's book. Square 1033 is the same in the De Kraft book as it is in the surveyor's book. Lot number one, in square 1033, is in the northeast corner of the square.

Thereupon plaintiff's counsel asked the witness whether the record of square 939 in the De Kraft book is a correct copy of the same square in surveyor's Square Book 3, according to the pencil numbers.

Thereupon defendant's counsel stated that they conceded that that was so, and the question was not answered.

26 Upon examination of the four "records of squares" from the office of the surveyor of the District of Columbia, it appears that:

1. First square recorded in No. 1 is square south of square 915, folio ¼.

The last square recorded in No. 1 is square west of square No. 4, folio 327.

2. First square recorded in No. 2 is square No. 320, folio 320.

Last square recorded in No. 2 is square No. 648, folio 648.

3. First square recorded in No. 3 is square No. 649, folio 649.

Last square recorded in No. 3 is square No. 975, folio 975.

4. First square recorded in No. 4 is square No. 976, folio 976.

Last square recorded in No. 4 is square north of square 1049, folio 1304.

Upon examination of the three "registers of squares" from the office of the commissioner of public buildings and grounds (War Department) it appeared that:

1. The first square in "vol. 1" is square No. 1.

The last square in "vol. 1" is square No. 558.

2. The first square in "vol. 2" is square 559.

The last square in "vol. 2" is square No. 1129.

3. The first square in "vol. 3" is square No. 1132.

The last square in "vol. 3" is square south of square No. 990.

After offering the aforesaid evidence, counsel for plaintiff offerred in evidence the hereinafter-described deeds and records of same; to each of which defendant, by his counsel, objected; but the court overruled each of said objections, allowing the said deeds here and hereafter described to go the jury, subject to the exceptions heretofore taken; to which counsel for defendant excepted to each rule, each of which was duly noted upon the minutes of the court before the jury retired.

And thereupon counsel for plaintiff read in evidence the following deeds relating to lots in square 939, in the city of Washington:

1. Deed from the corporation of Washington to William Brent, dated August 10, 1822. recorded in Liber W. B. 5, page 67, conveying lots 1, 2, 3, 10, 11, 12, 13, 14, 15, and 20, in square 939.

2. Deed from the corporation of Washington to George Collard, dated April 20, 1826, recorded in Liber W. B. 19, folio 18, conveying the following lots, among others: 10, 11, 12, 13, 14, and 20, in square 939.

3. Deed from George Collard, the grantee in the last above mentioned deed, to George Adams, dated September 18, 1826, recorded in Liber W. B. 18, folio 314, conveying lots 10, 11, 12, 13, 14, 15, and 20, in square 939.

4. Deed from George Adams to William Brent, recorded in Liber W. B. 17, folio 350, conveying lots 10, 11, 12, and 20, in square 939.

5. Deede dated March 2, 1827, from George Adams to William W.

Lowe, Liber W. B. 17, folio 368, conveying lots 13, 14, and 15, in square 939.

6. Deed from Thomas Woodward, coroner, and James Wil-
27 liams to Martha A. Austin and Jane Lowe, dated 16th of October, 1833, recorded in Liber W. W. 48, page 132, conveying lots 13, 14, and 15, sq*y*are 939, pursuant to sole *order fieri facias* under judgment against William M. Lowe.

And thereupon counsel for defendant further objected to the admission of the aforesaid deeds and those hereafter mentioned; but the court overruled each of said objections and admitted the same; to which ruling defendant, by his counsel, excepted, each of which exceptions was duly noted on the minutes of the court before the jury retired.

And thereupon counsel for plaintiff continued reading to the jury the aforesaid deeds and also the following deed, to wit:

7. Deed from William Brent to John H. Smith, dated November 24, 1838, recorded in Liber W. B. 71, page 205, conveying lots 10, 11, and 12, in square 939.

And after which counsel for plaintiff offered in evidence a constable's deed, hereinafter mentioned; to which counsel for defendant objected; but the court overruled said objection and admitted in evidence said deed; to which ruling counsel for defendant excepted, which was duly noted on the minutes of the court before the jury retired.

And thereupon counsel for plaintiff read said deed to the jury.

8. Constable's deed from Richard J. A. Culverwell to Martha A. Austin, dated March 5, 1846, recorded in Liber W. B. 125, page 412, conveying lots 10, 11, 12, 13, 14, and 15 pursuant to sale under writs of *fieri facias* under judgments against John H. Smith.

Counsel for plaintiff read in evidence (subject to the objection and exception heretofore taken) the following deed:

9. Deed from Martha A. Austin to John Hardy, as trustee, for the benefit of the children of John H. Smith and A. Caroline Smith, dated August 15, 1859, recorded in Liber J. A. S. 182, page 129, conveying lots 10, 11, 12, 13, 14, and 15.

And after which counsel for plaintiff read in evidence to the jury (subject to the objection and the exception heretofore taken and further objections and exceptions that there are four parties to the deed. The deed has only a simple acknowledgment of the execution thereof, the parties not acknowledging that it is their act and deed. Louisa W. Smith, the *cestui que trust*,— appears on the deed, is the wife of William A. Page, and Caroline A. Bowen is another married woman; there is no separate acknowledgment as required of *femmes cou-rt*) the following deed:

10. Deed from John Hardy, trustee, and the Smith children, Louisa M. Page and Caroline A. Bowen and William I. Smith, who were the *cestuis que trust*, to John Chester, dated October 19, 1872, recorded in Liber 698, folio 382, conveying lots 10 to 15, both inclusive.

And after reading of the aforesaid deeds counsel for plaintiff of-

fered and read in evidence to the jury (against the objection and exception taken thereto) the following deed :

28 11. Deed from William Brent to John Carroll Brent, recorded in Liber W. B. 114, p. 242, conveying lot 3, dated December 26, 1844.

After reading of the aforesaid deeds counsel for plaintiff offered and read in evidence the following deeds (against the objection and exception taken thereto, and on further objection and exception taken that there is an acknowledgement in Florida of two of the parties, Henry I. Brent and his wife, and the form of the acknowledgment, taken in the city of Brooklyn, county of Kings, State of New York, defective).

12. Deed dated August 13, 1850, recorded in Liber J. A. S. 26, folio 70, from Thomas W. Brent and Merci G. Brent and Henry I. Brent, Weltha A. Brent and John Carroll Brent to Elizabeth Brent, widow of the late William Brent, conveying in fee-simple, among other parcels of ground, lots 1 and 20, in square 939.

And thereupon counsel for plaintiff offered and read in evidence to the jury (without relying upon the recitals in the deed) the following deed :

13. Deed from Henry I. Brent and wife to John Carroll Brent, as trustee for Elizabeth Brent, conveying lots one and 20, square 939, dated February 11, 1867, recorded in Liber E. C. E. No. 1, page 106.

And after reading of the aforesaid deed (with recitals) counsel for plaintiff offered and read in evidence the following deed (leaving out also recitals therein), to wit :

14. Deed from Charles E. and Francis N. Brent to Elizabeth Brent, dated January 24, 1853, recorded in Liber J. A. S. 50, folio 485, conveying lots 1, 2, and 20, in square 939.

After reading of the aforesaid deeds (subject to the objections and exceptions aforesaid), plaintiff by MICHAEL J. GRIFFITH, gave evidence to the jury tending to show :

Showing he was chief clerk in the office of the register of wills; that the wills of persons who lived and died in the District of Columbia are kept in the office of register of wills of said District, in which he is employed; that he has with him the nuncupative will of late William Brent, not affecting real estate, and also the will of Elizabeth Brent; that he obtained them from the register of wills' office, where such papers are kept. The will of Elizabeth Brent was filed April 11, 1863. It does not appear when will of William Brent was filed, but it appears among the recorded wills of 1843. He has not made a search to find any other will of William Brent.

And thereupon counsel for plaintiff offered in evidence to the jury the will of Elizabeth Brent.

The witness further testified that he was acquainted with the late John Carroll Brent and is familiar with his handwriting ; that the original bill in cause No. 738, chancery rule 5, in the supreme court of the District of Columbia, is in the handwriting of John Carroll Brent.

And, further, that paper purporting to be the deposition of John Carroll Brent in the same cause is his handwriting also.
29 The signature Elizabeth Brent in the original bill is not his handwriting.

And thereupon counsel for the plaintiff offered in evidence to the jury said will of Elizabeth Brent.

Counsel for defendant objected; but the court overruled said objection; to which ruling defendant, by his counsel, excepted, which was duly noted on the minutes of the court before the jury retired.

And thereupon counsel for plaintiff read said will of Elizabeth Brent to the jury, which is in the words and figures following:

In the name of God, amen. I, Elizabeth Brent, of Washington city in the District of Columbia, being of sound and disposing mind, memory and understanding, do make and publish this my last will and testament, in manner and form following, that is to say:

In the first place, whereas my sons, Charles E. Brent and Francis N. Brent having by their deed dated 24 January, 1854. recorded Liber J. A. S. No. 50 folio 485 &c., conveyed without consideration in money to the undersigned, all their right, title, interest and estate, as heirs-at-law, in and to the estate of their late father and husband of the testatrix, Colonel William Brent, it is my desire and intention to restore the said interest and estate to the same position as the same stood in law and equity previous to the execution of said deed, free and discharged from all and any right or claim on my part or that of my heirs, devisees or assigns—therefore I do hereby release and reconvey to the said Charles E. Brent and Francis N. Brent, and their heirs and assigns forever and do hereby give, and devise to them and to their heirs and assigns, respectively, all the right, title and interest so conveyed by said deed to the testatrix of their shares and interest as heirs-at-law in the estate of their late named deceased father. In the second place I commit my soul into the hands of Almighty God and my body to the earth to be decently buried according to the rights of the Holy Roman Catholic Church, of which I am a member, and after my lawful debts and funeral expenses and charges are paid, I give and devise as follows:

I devise and bequeath all the residue and rest of my estate, both real and personal, to be equally divided among my hereinafter-named sons and daughters, viz: Charles E. Brent, George Brent, Francis N. Brent, and Mary Virginia, wife of Robert S. Chilton, Clementina D. Brent and Emily C. Brent, to them and their heirs and assigns, forever, in equal portions, share and share alike.

And lastly I do hereby constitute and appoint my stepson, John Carroll Brent, of said city, the sole executor of this my last will and testament, revoking and annulling all former wills by me heretofore made, ratifying and confirming this and none other, to be my last will and testament.

In testimony whereof, I have hereunto set my hand and affixed

my seal this tenth day of July, in the year of our Lord one thousand eight hundred and sixty-one.

ELIZABETH BRENT. [SEAL.]

30 Signed, sealed, published, and declared by Elizabeth Brent, the above-named testatrix, as and for her last will and testament, in the presence of us, who, at her request, in her presence and in the presence of each other, have subscribed in our names as witnesses thereto.

W. J. McDONALS. [SEAL.]
W. F. SHUNK. [SEAL.]
ANNA ELEGA BRENT. [SEAL.]

DISTRICT OF COLUMBIA, } *To wit:*
Washington County, }

ORPHANS' COURT, *April* 11, 1863.

This day appeared W. J. McDonal, W. F. Shunk, and Anna Elega Brent, the subscribing witnesses to the aforegoing last will and testament of Elizabeth Brent, late of Washington county aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testatrix therein named sign and seal this will; that she published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of their apprehension, of sound and disposing mind, memory, and understanding, and that their names as witnesses to the aforegoing will were signed in the presence and at the request of the testatrix and in the presence of each other.

Test: Z. C. ROBBINS,
Register of Wills.

Endorsement: 1863. Will of Mrs. Elizabeth Brent. Fully proven and submitted to probate 11th April, 1863. Endorsed: Liber M. K. No. 1, pp. 170, 171. Filed 11th April, 1863.

JOHN STEWART recalled for further examination by defendant's counsel:

I have brought with me this morning the book showing the sales of these lots in square 939. It is Ledger old No. 6, new No. 8, in the office of the commissioner of public buildings, and it contains, among other things, the sale of lots in the city of Washington by the United States and the money received for them. It is one of our official records.

The following entry from pages 174, 175 in said book was thereupon read in evidence by defendant's counsel (against the objection of the plaintiff's counsel that it was not proper cross examination):

"Account of sales of city lots; current account; period, 1851. July 14, by cash received of William T. Baldwin for lots numbered 4, 5, 6, 7, 8, 9, 16, 17, and 19, in square number 939, containing 51,855 square feet, at ¼ cents per foot, $129.64."

Defendant's counsel called attention of the court and jury to the fact that all the other entries on the same page and the subsequent

page consisted of similar entries of cash received from other parties for other lots in different squares.

31 WILLIAM FORSYTH, a witness called and examined on behalf of the plaintiff, testified as follows:

I will be 77 years old next August. I have lived in Washington since 1850. I am now surveyor of the District; have been connected with the surveyor's office of the District and of the city since the fall of 1850; was elected surveyor of the city in 1857. Prior to that time I made surveys for the surveyor of the city, Mr. Ball, and was assistant to Randolph Coyle in establishing the grades of the city. Since 1857 I have been out of office twice, the first time for two years and the second time about four years, and all the rest of the time since 1857 I have been the surveyor of the District.

The four large books in the surveyor's office that are called records of squares I recollect from 1850 up to the present time. The Book N. K., containing old subdivisions, was there, too. It commenced along in 1809. In Book N. K. I have found the handwriting of the old surveyors. There was a surveyor named William P. Elliott somewhere about 1844 or 1845. In the record of squares No. 3 in the record of square 728 I found corrections made there in Elliott's handwriting. I also find his handwriting on square 819 in the same book. These corrections are all in figures. Randolph Coyle was surveyor about 1848, and I find his handwriting in the record of squares No. 1 in the record of square No. 10. There are two corrections there signed by Randolph Coyle, and both dated March 14, 1838. I recognize these as Mr. Coyle's signatures. These four books called records of squares were in the surveyor's office when I first had any acquaintance with it. From the books I have become acquainted with the handwriting of a former surveyor named De Kraft. His handwriting and signature appear in Book N. K. records of subdivisions; he was then United States surveyor. There is a book in his office the whole of which is in his handwriting. It has been there since 1850 or 1854. The whole book was originally in his handwriting, but there were several squares which I supplied by request of Doctor Magruder when he was mayor. I supplied some of the lost leaves. When I first saw that book it looked about as it does now; several pages were gone and it looked dilapidated. From the appearance of the book the missing pages must have been worn out, not torn out. I know from my own knowledge that when they got me to supply those squares the book was pretty well used; that must have been in 1856. The book was then in the office of the tax collector, where it was used for the purpose of separating lots from parts of lots so as to make the assessments. Here is a sample of my work in this page (pointing to square 196). The rest of that page is De Kraft's.

I have no personal knowledge as to when either the pencil or the ink numbers in square 939 were put in the record of squares in my office. How they got there or why they were put there I know not. My attention was first called to them years ago, when there was a case in court about it; I can't tell whether they were there in

1850 or in 1856. In the De Kraft book I recognize all the
32 figuring and handwriting relating to square 939 to be in the handwriting of De Kraft, including the boundaries "North C street," &c.

I remember somebody bringing me a book containing records of squares, published under a resolution of the Senate, and getting me to correct it. I made some 1,400 or 1,500 corrections.

Cross-examination:

The corrections to which I have referred made by Surveyors Elliott and Coyle are in ink, and Mr. Coyle has signed those made by him.

A copy of the Senate book already referred to in the evidence being here shown to the witness by defendant's counsel, he recognizes as his own writing this inscription therein:

"This book corrected by William Forsyth, engineering surveyor, December, 1853, for Nicholas Acker, Esquire."

As to the 1,500 corrections which I made in that book, they consisted sometimes in reversing the numbering; they are generally correcting the frontage of the different lots. I went through the Senate book and corrected it according to the records in my office. I think so; that was my intention. I made no correction as to square 939 or as to square 949. Square 1058 appears in the De Kraft book divided into lots. It is upside down.

Record Book No. 4, from the surveyor's office, being produced, the witness says:

This book is an index of the odd squares—squares numbered irregularly, as, for instance, square south of 18, square north of 16, &c. In the De Kraft book there is square 1070 not subdivided into lots. There is no square 1070 in the record of squares in the surveyor's office. The whole of square 1058 in those records is in pencil. I cannot say who did that or when it was done. There are sundry squares that have been left off these books. I do not know whether any of the squares left off these books appear in the records of the office of the commissioner of public buildings. These four books entitled records of squares numbered 1, 2, 3, and 4, in the surveyor's office, show the different squares comprising the city of Washington only. I do not know where they came from, nor whether they are copies from the originals in the office of the commissioner of public buildings and grounds. I have no information on that subject. I know that they are in my office, and I can show you by the survey of Nicholas King that he made sundry subdivisions of lots that he signed himself as surveyor of the city of Washington, and these squares that were subdivided by him recorded in N. K. book. If he had no power to do that, why did he do it?

Thereupon defendant's counsel asked the witness the following question:

"Q. In 1853, when you went through this plat book and made

these corrections, if these pencil numbers in square 939 were at that time on this book, would you have put them on here?"

33 To this question the plaintiff's counsel objected on the ground that the witness had already testified that he is unable to tell whether these numbers were on the records when he first saw them or not. The court sustained said objection, and thereupon counsel for defendant excepted to the ruling; which exception was duly noted on the minutes of the court before the jury retired.

Cross-examination resumed:

In 1859 I made from the records an official plat and certificate of square 939. The lots in that plat were numbered, but whether according to the pencil numbers or the ink numbers I cannot say. In exercising the duties of my office I have never paid any attention to the pencil figures on that square.

Redirect examination:

I don't remember ever having had anything official to do about square 939 that called upon me to decide whether I would adopt the ink numbers or the pencil numbers. I did with my own hands the work of comparing the numbers of lots in that Senate book with the numbers on my books to see whether they agreed. I certainly intended where there was a difference in the numbering of the Senate books and my books to correct it, but I can't say whether I did or did not. There were about forty or fifty squares left out of that Senate book altogether. It was intended that the Senate book should be made a complete copy. Upon looking at square 749, as recorded in the Senate book, I see that lot number one should be where lot number 10 is. In the Senate book the numbering of the lots in square 749 begins in the southwest corner of the square. On looking at my record of square 749, in Record Book No. 3, I find that lot 1 begins at the southeast corner, where it ought to begin. It appears that I did not correct that mistake—No. 1 in the record in my office is where No. 10 is in the Senate record. If I had observed that difference I would have changed the Senate book so as to correspond with my re-ord.

Recross-examination:

I do not know how that square appears in the office of the commissioners of public buildings.

MARY S. BOWEN, a witness called and examined on behalf of the plaintiff, testified as follows:

I reside at 606 A street northeast, in this city, and have lived in Washington all my life. My father was William T. Baldwin, and he died September 3, 1862. He was living in Washington at the time of his death, and I was living with him. My mother survived him twenty-one years. She lived in Washington until she died. My earliest recollection begins when I was living at the southwest corner of 10th and B streets northeast, at the time my

father's family was composed of my father and mother and
34 five children. My mother's name was Mary A. Baldwin.
Only two of the other children are living, Mrs. Martha J. Martin in Anacostia, and Mrs. Elizabeth Blakesley, on 9th street N. E., in this city. I knew W. W. Lowe. He was my mother's brother. Mr. Lowe lived in Baltimore. He had several sisters, who were my aunts, Mrs. Martha Austin, Mrs. John Smith, Mrs. John Hardy, and Mrs. Baldwin. Mrs. Austin and Mrs. Smith lived on square 939, at the southwest corner of C and 10 streets, in a very modest frame house with beautiful grounds surrounding it. The grounds ran to C street. The house is still there. It is north of where Mr. Bradley and Mr. Eakle lived. The house my aunts lived in was not right on the corner. Some houses have recently been erected between it and C street. Mrs. Smith's Christian name was Jean; she was sometimes called Jane. My aunt ceased to live in that house long before the war; how long I can't tell. My mother's mother was living in that house, too, but I never saw her. There were two Mrs. Baldwins; two brothers married two sisters. My impression is that my aunt, Mrs. Smith, went to the house soon after she was married. She was married from there and returned there; her children were born there. The oldest of her children is now about fifty years old. Her children left there soon after her death and closed upo the house. I do not remember the year of her death. The property was afterwards sold and the proceeds divided among the children. The fence which surrounded this house where my aunts lived ran along three streets and enclosed six lots which fronted on those streets; they fronted on 9th and C and 10th streets. The tradition in the family is that my uncle, W. W. Lowe, had that house erected. He was a merchant in Baltimore, residing in Maryland, and wanted to shorten the distance from his mother's home and bring her to Washington to live. He had to make the journey to Baltimore on horseback. His mother lived there with his sisters in that house and died there. My uncle, Mr. Hardy, was trustee for Mrs. Smith's children. His full name was John Hardy. Mrs. Smith's husband's full name was John T. Smith.

We left the house on the south side of B street opposite this square before the war. We went from there to the house on the corner of East Capitol and 10th streets, two blocks further south. We lived there until after mother's death. My father died there, too, but when he died I was away from Washington. I went away in 1873 and was gone eighteen months. The nearest I can come to when we left the B Street house would be the summer one of the boys was born there. It must have been thirty-five or thirty-seven years since we left that house. I was living in that house when my earliest recollections begin, and was living there from that time until about 1860. While we were living on B street my father was the owner of a part of square 939. He manifested his ownership by having possession of it and by fencing it in. He had it enclosed. He enclosed all the vacant land in that square, including the lots that he purchased. My aunts claimed six lots, and Mrs. Bradley and Mrs. Eakle one or two. My father purchased

the ground there, and all the vacant ground there was
35 supposed to have been his. It was all enclosed for years except those six lots and what the Bradleys had. He enclosed them. His fence originally ran clear across from 9th to 10th streets on B street. It ran upo- B street to those six lots that my aunts had, and on 10th street it ran up that far, going around the Eakle and Bradley lots. I remember that property for the last forty years. I remember Colonel William Brent. I had an impression that I had heard in my family that he had lots there; that is my best recollection. We raised vegetables on those lots in square 939. We usually kept a hired man who attended to such things, and sometimes my brother, Gabriel Lowe Baldwin, did it. He is dead. That was before we moved up to East Capitol street. My father's hired man and my brother occasionally were cultivating these lots across the way for a number of years. I cannot speak of that after we moved to East Capitol and 10th streets. The lots across the street from where we lived were cultivated in this way. I have an impression that all of it was. We got our early vegetables from over there. I remember we had fruit there. I know I had some impression about my father paying taxes on lots in that square in the name of William Brent. My father was a peculiar man, and he never used anything he did not pay for, and I had the impression that is how he came to use the lot. I don't know how I got that impression; on account of my father's peculiarity, I suppose. I can't find such tax bills now, and I really am not positive I have seen them. I searched for those tax bills because plaintiff's counsel asked me to after I had told them I had an impression. I cannot explain the difference between an impression and a recollection.

After my father's death we had property on all sides of that square, on 9th and B and 10th streets. A man named Morris Downs lived on the south side of B street between 9th and 10th streets, and I believe he has a lease from my mother which I identified here a few months ago. His house fronted on B street some distance from 9th street, but nearer 9th than 10th. It was an ordinary one-story frame structure, built for a store. When he first moved there he had no family, but he and his brother kept a store; later on he married. It was long after the war that Downs went there. I recollect mother collecting rent from Downs while he was living in this house on B street between 9th and 10th after the war.

Thereupon counsel for the plaintiff offered in evidence a paper purporting to be a lease made by Christopher Ingle and Mary Baldwin, the signature of Mary Baldwin to which was proved by this witness, and counsel stating that he would subsequently prove the signature of Morris Downs; to the introduction of which said instrument in evidence the counsel for defendant objected on the ground that it was not properly proved; but the court overruled the objection, and counsel for the defendant excepted to the ruling of the court, and the same was duly noted on the minutes of the court before the jury retired.

36 The said lease is in the words and figures following:

("EXHIBIT M. B. No. 8.")

This indenture made this thirteenth day of June, in the year one thousand eight hundred and sixty-six between Christopher Ingle of the city of Washington in the District of Columbia of the first part Mary Baldwin of the same place of the second part and Morris M. Downs of the same place of the third part.

Whereas by certain deed bearing date of the 13th day of February, A. D. 1856, and recorded in Liber J. A. S. No. 111, folio 241 *et seq.* one of the land records of Washington county in said District the real estate hereinafter mentioned was conveyed by William G. Baldwin to the said Christopher Ingle, his heirs and assigns in trust (among other things) that the said trustees should with the written request and assent of the said Mary Baldwin execute and deliver any conveyance of said real estate to whomsoever the said Mary Baldwin might designate now therefore this indenture witnesseth that the said Christopher Ingle at the request and with the assent of the said Mary Baldwin testified by her being a party to these presents and in considerations of the rents and covenants hereinafter mentioned to be paid and performed by the said Morris M. Downs doth hereby lease unto the said Morris M. Downs all that piece or parcel of ground in said city of Washington, designated on the plat of said city as part of lot numbered four (#4) in square numbered nine hundred and thirty-nine from the thirteenth day of June in the year one thousand eight hundred and sixty-six, for the term of one year at the yearly rent of ninety-six dollars payable monthly in advance the sum of eight dollars parcel thereof to be paid immediately upon the execution and delivery of these presents and the like sum to be paid on the thirteenth day of every month and the said Morris M. Downs -or himself, his heirs, executors and administrators doth hereby covenant and agree to and with the said Mary Baldwin, her heirs, executors and administrators and assigns that he the said Morris M. Downs, his heirs, executors, administrators shall and will well and truly pay the aforesaid rent unto the said Mary Baldwin, her heirs, executors and administrators at the several times and in the manner hereinbefore reserved for the payment of the same and that he the said Morris M. Downs, his heirs, executors and administrators shall and will well and truly pay and discharge all taxes, assessments and public dues assessed or levied or to be assessed or levied upon said real estate at any time during said term, and it is further covenanted and agreed by and between the said parties that if default shall be made in the payment of said rent or of said taxes, assessments and public dues so that the same or part thereof shall be in arrears and unpaid for the space of ten days after the same shall have severally become due and payable then it shall be lawful for the said Mary Baldwin, her heirs or assigns to re-enter upon the said described premises and put an end to this lease, or in
37 case of such default in the payment of rent to make distress at her or their option.

In testimony whereof the said parties of the first, second and third part have hereunto set their respective hands and seals the day — year hereinbefore written.

(Endorsed ōn back.)

MORRIS M. DOWNS. [SEAL.]
MARY BALDWIN. [SEAL.]

Signed, sealed, and delivered in presence of witness*eth*—
THOS. W. FINNEY.
THOMAS WELSH.

(Endorsed further on back :)
"Morris M. Downs. (Lease.) M. B. 8 (in pencil). Exhibit M. B. No. 8. To Fowler *vs.* Slater *et al.* Equity. No. 14348. Filed Nov. 22, 1894, with T. H. Fitnam, examiner."

Thereupon the plaintiff, having introduced testimony tending to prove that John Carroll Brent was a son of William Brent, and that the bill in the case of Elizabeth Brent *vs.* Charles E. Brent *et al.*, No. 738, Chancery Rules 5, in the late circuit court of the District of Columbia, filed March 31st, 1851, the answer of said John Carroll Brent, and the deposition by him in said cause, were in the handwriting of said John Carroll Brent, offered the said papers in evidence, subject to the objection and exception of the defendant, the substance of said papers being that the said William Brent died in 1848, seized, as was claimed, of certain parcels of real estate in the city of Washington, among which were lots 1, 2 and 20, in square number 939, leaving him surviving his widow, Elizabeth Brent, and, as his only heirs-at-law, three children by a former marriage, namely, Thomas M. Brent, Henry G. Brent, and John Carroll Brent, and six children by his second marriage, namely, Charles E. Brent, George Brent, Francis N. Brent, Virginia Brent, Clementina Brent, and Emily Brent. The plaintiff, under the like objection and exception, further offerred in evidence, the record of the proceedings in said cause, tending to prove the appointment of John Carroll Brent as trustee to make sale of the real estate of the said William Brent by decree of June 29, 1851, and his report and ratification by the court, in 1875, of the sale of lot 1, in square 939, described in his said report as situated on the northwest corner of B and 10th streets, to Margaret Murphy.

And the plaintiff, under the like objection and exception of defendant, offered in evidence the record in equity causes numbers 5632 and 6469, in the supreme court of the District of Columbia, in 1879, the substance thereof being that partition proceedings were had in said causes among the persons named therein as heirs of the said William Brent, who were the parties to the said suits of his unsold real estate, and that in said partition suits lot 20, in square 939,
fronting on 10th street and corresponding with pencil number
38 lot 20, was assigned to Mrs. Virginia Chilton, *née* Brent, and that lot 2, fronting on B street and corresponding with pencil

number lot 2, was subdivided into lots "A," "B," and "C," of which lot "A" was assigned to Emily Brent, and lots "B" and "C" to Clementina Brent.

Witness resuming:

My mother did not make any disposition of any of this property in square 939 before she died—well, a portion of it, I believe, was sold. I do not believe that that is my genuine signature as a witness to the deed to Joseph R. Ashley, although I may have testified that it was at the former trial of this case.

Cross-examination:

My father at one time lived on New York avenue between 9th and 10th streets northwest. I was born on New York avenue, and the old house is standing there now. I don't remember how old I was when we moved away from that house. During the war the fence along B street was taken down and thrown aside and the rest of it was carried away. The soldiers had possession of everything in the neighborhood. My father bought that property in 1851 and he then enclosed it. That enclosure remained there until some time during the war, when it disappeared. I can't say that my mother removed it.

Redirect examination:

I don't remember when my father put up that fence on square 939; all my knowledge on that subject is what I have heard. My recollection of that fence goes back forty years.

Recross examination:

At the time my father enclosed that land I heard it repeatedly said at the time of the building that the fencing was prepared on our farm and brought ready to be put up.

Redirect examination:

That farm was east of Washington, partly in Maryland and partly in the District. The statements that my father made about building that fence were made during the time it was being put up. I do not know how old I was then, but it was while we were living on the corner of 10th and B streets. As we lived right across the street, I might have seen them put up the fence; I could not say just when it was fenced.

JAMES P. RYON.

This witness was shown the deed dated August 18, 1872, between Christopher Ingle, Mary Baldwin, and Joseph R. Ashley, pur-
39 porting to be witnessed by him and the preceding witness, and testified that he remembered witnessing the execution of that deed; that he knew Mrs. Mary Baldwin and Mr. Ingle and

saw them sign the paper, and that he also saw Mary S. Baldwin, Mrs. Mary Baldwin's daughter, sign the paper as a witness.

Thereupon plaintiff's counsel offered *to* evidence the following deed:

John Kilty, Josias Wilson King, trustee, to James Davidson, Junior.	Deed dated 10th March, 1809; recorded 26th July, 1809, in Liber W or 22, folio 215.

Convey, as trustees appointed by decree of high court of chancery of Maryland, dated 9th October, 1806, in suit entitled Executors of Mordecai Lewis and others, complainants, against Commissioners of the City of Washington and others, respondents, at sales made, beginning 28 November, 1808, and ending 6 December, 1808, * * * the lot numbering 18, in the square 939, and many others in other squares at certain rates per square foot, amounting in the whole to thirteen hundred and sixty-five dollars and twenty-eight cents (1,365.28).

Thereupon the plaintiff's counsel offered in evidence deed from John Kilty and Josiah W. King, dated May 14, 1810, and recorded June 7, 1810, to James Davidson, and recorded in Liber Y, page 296, conveying lot 18, in square 939, among others.

Also a deed from James Davidson to William Davidson, dated January 7, 1822, recorded in Liber W. B. No. 3, folio 446, conveying lot 18, in said square 939.

Also a deed from Robert B. Davidson and others to Isaac C. and Nathaniel Weed, dated December 7, 1852, recordede in Liber J. A. S. 45, conveying lot in said square 939.

Also a deed from Isaac C. Weed and Nathaniel S. Weed, dated April 23, 1853, recorded in Liber J. A. S. 54, page 456, conveying said lot 18, in said square 939, to Reede Bradley.

Also a deed from Reede Bradley to Elijah H. Eakle, dated November 15, 1855, recorded in Liber J. A. S. 111, folio 266, conveying the south half of said lot 18 as laid down, numbered, and described on the ground plat or plan of the city of Washington, D. C.

Each of said deeds were offered in evidence, subject to the objection and exception of the defendant's counsel taken and noted on the minutes of the court before the jury retired.

MARY F. EAKLE, a witness called and examined on behalf of the plaintiff, testified as follows:

My husband, Elijah H. Eakle, has been dead about over thirty years. I came to Washington to live in 1852 and am now living on 10th street between B and C streets N. E., about midway of the square, on the west side of 10th street. My husband built there in the spring of 1856; the lot was bought in the fall of 1855. My husband purchased it from Reede Bradley.

40 Thereupon counsel for the defendant objected to the admissibility of all evidence given or hereafter to be given by this witness on account of occupying pencil numbered lot 18, in square 939. The court overruled the objection, and counsel for the defendant excepted, and said exception was duly noted on the minutes of the court before the jury retired.

Witness resuming:

Reede Bradley had built on the north half of the lot before we bought the south half, and the two houses are still there together. My husband never built on or otherwise used the lot at the corner of B and 10th streets in the same square. The original lot where these houses are was 55 feet and 7 inches, I think. We took the south half and since then I have taken a strip of eighteen feet south of me. The front of lot 18 was equally divided between Reede Bradley and my husband; there was an alley through the center belonging to each party. Mrs. Bradley is my sister; she had been living there two or three years before we built, and I used to visit her during that time and as far back, perhaps, as 1853. At that time there were no houses on square 939 except Mr. Bradley's house and an old house that belonged to the Baldwin heirs, I think, which was on 10th street between C street and the Bradley house. There were two lots between the Bradley house, I think, and that house. There was some vacant ground between that old house and C street; that old house was a frame house and is called the Gypsey house. It looked like an old house when I first saw it in 1852. When my husband built there were only the three houses on the square. When I first became acquainted with that square the whole square was enclosed with a rail fence and was planted in corn. The whole square continued to be fenced until near the close of the war. It was a fence made of posts with holes with them and the rails run through. I am sure my husband took away a portion of the fence when we built, because Mr. Bradley did not have a fence in front of his place before he built. The portion of the rail fence that ran through his lot was there, I think, when my husband built, and he took it away. It was Mr. Baldwin who was cultivating the land and raising corn. I knew Mrs. Baldwin. They lived right at the foot of the hill from us on B street—corner B and 10th—the south side of B. After Mr. Baldwin died Mrs. Baldwin continued to use the square until the soldiers commenced to come around there, as near as my recollection goes. Sometimes she planted corn on it and sometimes oats, and I think she abandoned using it when the soldiers came around. I never heard the lot on which my sister, Mrs. Bradley, lived called 15 until, I think, as late as 1865 or 1866. Some one told us that it was not eighteen, but it was 15—that 18 was at the foot of the hill—but we were placed there by the surveyor, and we always thought we were right. Our deed called for 18, and we always supposed it was 18.

Morris Downs occupied a part of that square during the latter part of the war. He moved his sutler's shop—a little one-

41 story shanty—there. It fronted on B street northeast nearer 9th than 10th. He commenced just after he moved there and cultivated the garden, which extended towards 9th street, but not as far as 9th. After the war Downs built additions to his shanty. Downs' shanty remained there, I think, until 1880, when it was moved eastward. I was away living in the country, I think, from 1879 until 1881 or 1882, and when I came back the shanty had been moved eastward to where it is now. At present it is on B street nearer 10th than 9th. It had been moved, I should think, all the width of this court-room, if not a little more. There was always an open space between Downs' place and 9th street, when we used to go down the hill and strike 9th street, though there was no street then; it was more like a lane.

Cross-examination:

Mr. Bradley moved into his house in the fall of 1853, according to my best recollection. My first visit to my sister there was some time in the fall of 1853. That was the first knowledge I had of the square, and at that time the whole square was enclosed. Mr. Bradley did not put any fence in front. That old rail fence still remained there in front of his house, because many times when I went out there we had to crawl under the rail to get into the house. He did not put up his fence around the place until some time after he built. We enclosed our own yard. After my husband's death we put up a back gate, and used it to run back down to Ninth street. My boys would go that way to 9th street, and sometimes they ran into Downs' garden fence and broke it down. At that time the lot right at the corner of 9th and B streets was unenclosed, but whether it was a whole lot or not I don't know. When we built on 10th street neither 9th or 10th streets were open; 9th street was nothing but a lane, and they have cut 10th street down of late years. During the war we were surrounded by soldiers, and with the advent of the soldiers Mrs. Baldwin took the fence around that square away.

About 1892 I conveyed away my interest in lot 18. Mr. Slater came to me and said he had got a title from the Walker estate to the land where I was. He called it 15, and I told him I thought I owned it by adverse possession. I said, "That is my home where I have always been, and I don't lay claim to any other." He said he wanted the corner lot down there, and that my record title was for that lot. So he gave me $1,200 to give him a quitclaim deed of my right or title, and he gave me a deed for lot 15. I got $1,200. I told him plainly I never claimed that lot. Mr. John Chester and Mr. Slater both gave me a quitclaim deed to lot 15, and I hold deeds for both lots 15 and 18.

It was just about the close of the war that Morris Downs' shanty was moved onto that square. It must have been 1880 or 1881 when he moved his house to where it stands now.

42 Redirect examination:

My husband died in 1864. It was after the war that we put a gate at the back part of our fence. My house as it stands is right on the building line of 10th street. The surveyor was there when I bought the side lot—a strip of lot 19—sub. 19 they call it. Mrs. Baldwin had a man help her take the fence away from all around that square during the war, and he brought a cart to help take it away. The property which I conveyed to Mr. Slater was described in the deed as being the corner lot of 10th and B streets, and when he gave me a deed he described in it the property that I was living on, so that there was no mistake about it.

Thereupon counsel for the plaintiff offered in evidence the following certificate and deeds relating to said square 939 and other property; to which counsel for the defendant objected. The court overruled the objection, and counsel for the defendant excepted, and said exception was duly noted on the minutes of the court before the jury retired.

Certificate to James Greenleaf from the United States commissioner, dated July 9, 1794, recorded in Liber B, to the effect that said Greenleaf had purchased and paid for and was legally entitled to and seized of one thousand lots in the city of Washington, contained in square 939 and various other squares in said city.

Deed from James Greenleaf to Robert Morris and John Nicholson, dated May 13, 1796, recorded in Liber B, folio 562, of all lots contracted for by grantor from the commissioners of the United States.

Deed from James Greenleaf, Fox and Simpson, to Pratt, Francis, and others, dated March 23, 1797, recorded in Liber C, folio 154, of all lots conveyed by Greenleaf to Fox and Simpson by deed recorded in Philadelphia, Pennsylvania.

Deed from Robert Morris and John Nicholson to Pratt, Francis, and others, dated June 6th, 1797, recorded in Liber C, folio 192, of all property of the grantors in the city of Washington, in the District of Columbia.

Deed from Robert Morris and John Nicholson to Pratt, Francis, and others, dated June 24, 1797, recorded in Liber C, folio 204, of all property of the grantors in the city of Washington, in the District of Columbia.

Deed from the commissioner of public buildings to William T. Baldwin, dated July 14, 1851, recorded in Liber J. A. S. 29, folio 222, conveying lots 4, 5, 6, 7, 8, and 9, in square 939.

Deed from William T. Baldwin to Christopher Ingle, dated February 13, 1856, recorded in Liber J. A. S. 111, folio 241, conveying lots 4, 5, 6, 7, 8, 9, 16, 17, and 19, in said square 939, upon certain trusts set forth in the deed noted next below.

Deed from William T. Baldwin to Iradella, dated January 29, 1848, recorded in Liber W. B. 140, folio 443, conveying lots in square 916, 918, 966, 372, and 426, in trust for Mary Baldwin, for her heirs if she should die in the lifetime of grantor, and to

sell and convey, at her written request, to whomsoever she may designate.

43 Deed from John Kilty and Josias W. King, trustees, to Thomas Munroe, as United States superintendent, dated March 10, 1809, recorded in Liber W, folio 253, conveying lots 4, 5, 6, 7, 8, 9, 16, 17, and 19, in said square 939.

Deed from Christopher Ingle, of the first part; Mary Baldwin, of the second part, and Joseph R. Ashley, of the third part, dated August 18, 1872, recorded in Liber 696, folio 13, conveying to said Ashley in fee-simple lots 4, 5, 6, 7, 8, and 9, in said square 939.

Before the last described deed was read in evidence, counsel for defendant objected to the same on the further ground that said deed was not acknowledged by Mary Baldwin; said objection was overruled by the court. Counsel for the defendant thereupon excepted, and said exception was duly noted on the minutes of the court before the jury retired.

JOSEPH SHELTON, a witness called and examined on behalf of the plaintiff, testified as follows:

I was born in 1829 and have lived in Washington all my life.

I knew William Tyler Baldwin—he went by the name of Tyler Baldwin. So far as I know, farming and gardening was his principal business. He lived near the corner of C and 10th streets, in an old frame house called the Gypsey house, since gypseys have lived there, that is there still. I worked for him when he was living on the corner of 10th and East Capitol street and when I was about thirteen or fourteen years old. That was after he lived in the Gypsey house and when he lived on the corner of 10th and East Capitol streets. I never knew him to live *in* the corner of 10th and B streets. When he lived in the Gypsey house the whole square was enclosed—when I first knew it. It did not look to be a new fence at all. I have known that square off and on to the present time. It was enclosed, I think, up until during the war—in 1862 or 1863 probably that fence was around there. A man named Sprague kept a sutler's shop near the corner of 9th and B streets about the time of the breaking out of the war. The next party that I knew there was Morris Downs. There were some two or three shanty*s* stood right up back on this lot during the war—colored people's houses—they stood right back there from B street on the rise of the hill, back of the sutler's shop. To my recollection, that square was enclosed from the time I first knew it until Baker's cavalry came around there. The soldiers, I think, pulled some of the fence down.

Cross-examination:

When I was 13 or 14 years old, and Mr. Baldwin was living in the Gypsey house on 10th near C, I was living with my mother on the south side of E street southeast and at the corner of K and 11th streets southeast and probably one or two other places. The Gypsey house—the house that Mr. Baldwin lived in—was near the north

end of the square, near the corner of C and 10 streets. The
44 house fronted east on 10th street. It was an old-fashioned frame house with a hip-roof, with a small one-story back building. The house is there yet. When he lived there, to the best of my recollection, the whole square was enclosed. I do not remember whether there were any of the lots enclosed in connection with the Gypsey house; I am stating now from the recollection of my childhood, when I was 13. I have gone gunning all around that place. There were streets and everything enclosed, every square. I knew the whole, entire square was enclosed and worked by him. Whether there were any lots enclosed in there I never noticed. There were hardly any streets open at that time; it was all commons; hardly any houses about. I don't remember any other houses on that square when Mr. Baldwin was living in the Gypsey house. The next I knew Mr. Baldwin was living at the corner of 10th and East Capitol streets, when I was between fifteen and sixteen, when he employed me to drop corn and pull fodder and the like—two or three squares on the south side of East Capitol street he attended—and then I worked for him not more than three or four weeks. I was married forty-five years or more ago; I could not tell exactly when; would have to look at the record. I was right young when I was married, and since then have lived at the old toll-house at the foot of Pennsylvania avenue. Another place I lived was on the corner of 15th and K streets. Another place was between 10th and 11th and B and C streets southeast, where I lived about two or three years, I think about 1848 or 1849. I am living on D street between 12th and 13th streets southeast. I don't recollect Baldwin living anywhere except the two places I have named; unless he might have lived on the square between 10th and 11th and B and Mass. avenue. He tended that whole square, and there was an old frame house stood there on the corner. There was nothing particular to call my attention to square 939. I think the square east of it was enclosed and also the square west of it. The latter square was tended by a man named Coleman all during the war. All these squares, to the best of my recollection, were enclosed away back in 1841 or 1842.

I went on the police force in the latter part of 1861, and remained on the force upwards of twenty-five years. Occasionally I was out at square 939, on that beat, and after the war I was out there pretty regularly. Before the war I was out in the neighborhood maybe once or twice a year. It was off my beat while I was on the force. To the best of my knowledge, square 939 was enclosed in 1865 or 1866. There were two or three little shanty-s up above there, and the Gypsey house, and the Half-way house stood there, lived in by a man named Morris Downs. I think Morris Downs was there in 1861. I think that square was enclosed until 1862, when the soldiers came there and destroyed a good deal of the fencing around there. I think there was an enclosure there after 1862—I could not say the whole square. I think it was from the Half-way house all along the front there where those shanties stood, along B street. The shanties stood back a little way from B street, not on a line with

the street. They stood back, scattered around. The way I
45 know was we had occasion to search those places when a riot occurred there. Colored people lived there in small one-story shanties. There were two or three of these shanties. They might have been nearer 10th that 9th streets. I could not tell that. I don't think they were all there after Downs lived in this house. They were there before the war and at the breaking out of the war, between 1862 and 1863—1862, anyhow. They were there at the time of the riot, which I think was in 1862 or 1863. Six months afterwards I think they had disappeared. It might have been a year afterwards before I went out there after that. I was not on that beat at all. The reserve was called out. I was not on that beat at that time when the reserve was called out there on account of the riot and we searched those shanties. There was some of the square fronting that between 10th and 11. I was on that beat after the war and a little while during the war. I went on that beat permanently about the latter part of 1865 or 1866. I don't recollect seeing the shanties then. They might possibly have been one or more standing there. I don't recollect at all whether there was. I remained on that beat a year or more. The first knowledge I have of those shanties being there was when I went out there at the time of the riot to search them.

Redirect examination:

I knew Mr. Baldwin's son Jerry when I was fourteen or fifteen years old. Mr. Baldwin was then living with his son at the Gypsey house about that time.

THOMAS E. YOUNG, a witness called and examined on behalf of the plaintiff, testified as follows:

I was born in February, 1833, and have lived in Washington all my life. I knew Tyler Baldwin before 1839, but I went to his house in the fall of that year. He was then living, I think, on the west side of 10th street between B and C, back of East Capitol street there. I was then six years old. I went out there with my father, who wanted to get Mr. Baldwin to do some brick-work. Baldwin was a bricklayer by trade. We must have entered the grounds somewhere about B street. There were no streets opened then. At that time there was a post-and-rail fence around the square where Mr. Baldwin was living.

Here counsel for defendant said, "I suppose this goes in subject to our exception?"

To which counsel for plaintiff replied, "Certainly. If I understand correctly, there is nothing that has not gone in subject to exception."

The court thereupon ruled, "There is a general exception. You may have your exception to this."

Witness resuming:

The post-and-rail fence was an enclosure. I know that that fence was on 10th street between B and C; I did not know then. I am

talking about the northeast section of Washington, between
46 B and C and 9th and 10th streets. At that time I recollect Mr. Baldwin's family—his son Gabriel and the old lady. Gabe is dead. The next I recollect of Mr. Baldwin was going out there with my grandmother in August, I think it was, 1840. Mr. Baldwin was then living at the corner of 10th and East Capitol streets; had just moved in there when we went out there. I knew Mr. Baldwin from that time out. That post-and-rail fence that I have spoken of staid there until after the war broke out. It was an old fence in 1839, when I first saw it. I have no clear recollection of that fence after the war began.

I knew Morris Downs. He worked for a man named Roach, who kept a wholesale liquor store next to my place on Pennsylvania avenue. Carroll Brent used to come there and collect rent from Downs, or wanted to sell him a lot or something like that. That was about 1868 or 1869 or along about there. I afterwards learned that Downs was living in a frame house on the north side of B street between 9th and 10th northeast. He was nearer 9th street than 10th, according to my recollection. I was going by there when he came and talked to me. I was in a buggy. He had considerable of a lot around the house enclosed. I saw him there after that occasionally until he died, I think, as far back as I can recollect. I only know what he told me about moving his house to another place in the same block—he had his house in another place.

Cross-examination:

I recollect going to Mr. Baldwin's house when I was six years old because it was about the time they were going to build that smoke-house, and we went out there to see Baldwin about building it; we moved from 8th street over there in 1839. I recollect a heap further back that that. When I went to Mr. Baldwin's house in 1839 he was living in a two-story frame house with cherry trees all around it; there was a little paling fence around the house, but it did not run through from 9th to 10th streets. The post-and-rail fence was around the entire square. I was then living on Maine avenue between 3rd and 4½ streets southwest.

Mr. Baldwin was moving all the time. He did not live in places very long. From East Capitol and 10th streets they moved back again to a house that stood back there; they did not move back to the old frame house. The next place the Baldwins lived was in 1840 at East Capitol and 10th streets; he moved back and old Mrs. Wright moved in there. It was a very noted place in those days out there. I would not be likely to forget that. That place was right at the corner of 10th and East Capitol streets. When Baldwin moved away from East Capitol and 10th he moved back of that square somewheres along Mass. avenue or B street. I can't recollect which it was now; there was an old frame house standing there. After that he went to the house on the corner of 11th and East Capitol streets. Then, after the Wrights

moved out he moved back into that house. I never knew
47 of his living on New York avenue. After 1839 I next saw square 939 in about 1847, I think. I was out there plowing in the ground opposite where the Lincoln hospital stood, or Lincoln barracks, between 11th and 12th streets to 15th street, on that side of East Capitol street. At that time I went through the C Street lane at Mrs. Baldwin's two or three times with manure. At that time Mr. Baldwin was living on East Capitol street, and an old man, Sage, a printer, that used to work for old Peanut Thompson, was living in the house that Baldwin had lived in in 1839. From 1847 until 1853 I was out there very often. I did not then notice this square particularly. It was enclosed all this time up until the time the war broke out. In 1839 the square east of 939 and the square west of 939 were enclosed. All the squares pretty much out there were enclosed. The square 939 continued to be enclosed till the outbreak of the war only to some extent. Some of the streets were ordered open. I think Mayor Seaton was the first one ordered some of those streets opened. The fence around square 939 was there when I went out during the war. I think it was there in 1862, 1863, 1864, and 1865. I am pretty sure it was there, although I was not interested in that. I think the fence was around that square in 1867 and 1868. I am not positive about it, but I am pretty sure it was. In 1870 it was there. I never noticed whether there was a fence there after 1870. In 1839, when I went out there, there was no other house on this square that I recollect of. I did not notice much only that fence, and Mrs. Baldwin was ploughing when I went there.

A good many of the streets were enclosed—whole blocks, including streets, were enclosed, and a narrow lane ran through them, the fencing extending out. It was just a narrow place to drive through.

Mrs. RICHARD ROTHWELL, a witness on behalf of the plaintiff, testified as follows:

I came to Washington in 1852 and have lived here ever since. In 1852 I went to live in the neighborhood of square 939, and have known it from that time. The first part of the time I lived near the corner of 13th and F streets, and had to pass square 939 in going to my work. At that time square 939 was fenced in all around with a post-and-rail fence, and Mrs. Baldwin grew on it corn and oats and everything she could sell. There was then a very old house on the square, called the Gypsey house. It fronted on 10th street, not far from the corner of C. That fence staid there until the soldiers came during the war and took it down. This was the early part of the war—I think in 1861 or 1862. During the war there was a place there called the Half-way house, on the north side of B street, about thirty feet from 9th street. Mrs. Baldwin, I think, built some little shanties on the front of 9th street and collected the rent from there. I recollect the place about — they were built. It was between C and B on 9th and a little on the hill, on square 939.

I knew Morris Downs; he kept this Half-way house front-
48 ing on B street about half way between 9th and 10th. I think they moved that house towards 10th street twice; the first time they moved it about thirty feet from where it first stood; cannot say how far they moved it the second time.

Cross-examination:

In 1852 Baldwin was living in an old house fronting B street, on this square, between 9th and 10th. I think the Half-way house was there just a little before the war; I would not be positive, but I know it was there during the war. It was on B street, a little way from 9th, between 9th and 10th—about thirty feet east of 9th. The shanties were on 9th street between B and C; there were three of them, I know; they were just a little this side, coming in the rear of the Gypsey house; they started from the rear of the Gypsey house, a little to the south, of it, running south towards B street; they were one-story shanties, occupied by colored people. My recollection is that they were put there after the close of the war. I remember at the former trial of this case I said that the Gypsey house was a brick house; I made that mistake and want to correct it.

Redirect examination:

The Gypsey house had a large brick chimney on the outside of it. I would not swear whether there were more than three of those shanties, but I know that there were three; a colored man named Nick Jones lived in one of them, just back of the Half-way house.

Recross-examination:

The Jones house was one of the three I speak of; that fronted towards 9th street. These shanties were probably twenty or forty feet apart; they belonged to Mrs. Baldwin; she just put them there for colored people. Jones did not own the one he lived in; he rented it. I think a man named Brown lived in one of them; he used to work for me. I knew Nick Jones.

JOHN O'NEIL, a witness on behalf of the plaintiff, testified as follows:

I am eighty-four years old and came to Washington when I was six weeks old. I knew Tyler Baldwin and remember square 939 as far back as 1844. I don't know what houses it had on it at that time. Baldwin was living in the house. If he had a whole square his house was not on nothing but the corner. His house was on 10th street south of C street and nearer C than D. There was a post-and-rail fence all around that square at that time. Right in front of the house was not another post-and-rail fence. He might have had a little picket or garden fence there. He cultivated that square at that time for the market produce. That fence was not very new when I first saw it. It stood there until the soldiers pulled it down

and burned it during the war, about 1862 or 1863. I was out there at that time and Baker's cavalry arrested me.

49 Cross-examination:

There were two houses on 10th street, in square 939, in 1844; they might not have been right out to the building line. There was no street laid off or a footwalk to find out whether you had a square fenced in or not. One of the two houses set back in the lot something like thirty or forty feet from the other. Mr. Baldwin lived in one and I don't know who lived in the other. They were little frame houses; might have been a log house weatherboarded. I never went inside of it. Mr. Baldwin lived in the one called the Gypsey house, and the other one was south of it, and it was called the Half-way house. The Half-way house fronted on 10th street nearer to C than to B street, about thirty feet below Baldwin's house, sitting a little back further from the front. I did not see that square from 1844 until 1862 or 1863, when Baker's cavalry were there at the beginning of the war. That square was all fenced in in 1844 with a post-and-rail fence; in some places it was four rails and in some places it was three. It was fenced in in 1861 when Baker's cavalry arrested me, but the next time I saw it, the following week, it was not fenced in at all; it was gone, and some colored people's houses were gone too, but not all of them. My recollection is that those shanties occupied by colored people fronted on B street. There were no footwalks and no streets laid off, and you couldn't tell. There was just a lane there.

Redirect examination:

When I saw the two houses near C street, in 1844, Mr. Baldwin lived in the one that was nearest C street; the other was smaller and I did not observe whether anybody was living in it or not. I could not tell you whether that was his barn.

WILLIAM ROTHWELL, a witness on behalf of the plaintiff, testified as follows:

I am a son of Richard Rothwell; have known square 939 very well since 1855. At that time it was fenced in and used as a farm. There was corn and different things planted on it by Mrs. Baldwin. I know the Gypsey house very well, on 10th street near the corner of C northeast. Some portions of that square had been fenced in ever since I can remember up about the Gypsey house, but the lower part of the fence was taken away some time during the war. I should say about 1863. In the early part of the war—1862, as near as I can remember—there was on that square a little house known as the Half-way house. It stood near the corner of 9th and B streets. I think the Half-way house was there before the fence was taken away. The fence was still there when that was built, I think. I remember the cabins occupied by colored people which stood on that square on 9th street between B and C; that was, I think, about 1863 or 1864. There were four or five of them. They

stood about midway of the square, about half way between B and C streets, on 9th. The south one, I think, was within one
50 hundred feet of B street. A man by the name of Sprague first started the Half-way house, and then Downs took it after Sprague sold out to him or disposed of it in some manner, and then the house was moved by Downs further up towards 10th street. As to where that house is now, the old place is gone that used to be the Half-way house. Mr. Downs has a house that he might have remodelled from that; that is up now, I should think, about one hundred feet from the corner of 9th street. I could not say whether Downs moved the house more than once. I only know it was moved.

Cross-examination:

When I first knew square 939 I was about ten years old and used to pass by that way to go to school pretty often. I have been quite familiar with that square ever since. I have lived within one square of it most of my life. The post-and-rail fence around the square was about three rails; it might have been four. At that time there were three houses on the square—the Gypsey house, and, I believe, just at that time Mrs. Eakle and Mrs. Bradley were building there. They were built there about the time I first remember the square. I don't remember any other house there then except the Gypsey house.

I think the Half-way house was put there about 1862; it was just after the commencement of the war. I don't know who built it, but a man by the name of Sprague occupied the store; it might have been on 9th street and it might have been forty or fifty feet away. You could not tell where the street was in those days, because the fence extended away out into the street, and there was no street line laid off. Downs occupied it after Sprague and moved it I don't know how far. I don't know what became of that house. It is not there now in the shape it was there, unless Mr. Downs used it in building his house. Downs has got a house there now. I don't know whether the Half-way house was removed exactly to where his house is built, but it is within fifty feet; that I know. I would not say it is within twenty feet. I might be wrong in saying it is within forty feet. The post-and-rail fence around that square disappeared, to the best of my recollection, about 1862 or 1863; the soldiers were then about a square or two squares away. Baker's cavalry were stationed near there, and there were any quantity of soldiers scattered all over the commons there. The cabins I spoke of were on 9th street, about midway of the square; they were not all close together. They did not complete them all at one time. I understood they leased the ground from Mrs. Baldwin. I did not have anything to do with it. They were one-story shanties, about midway of the square on 9th street between B and C. They were not right adjoining each other. I suppose there was twenty feet or more between them; I don't remember now. I suppose those shanties remained there twelve or fifteen years. I have not any idea when they went away from there at all; it might have been

later than 1878. I think they were there some times in the eighties. I do not know what became of them. They disappeared from there.

51 I don't remember where Baldwin lived in 1855. In 1859 he lived on the corner of East Capitol and 10th streets, and prior to that, I think, on C street between 9th and 10th; but I am not sure of that. I was born February 22, 1845.

Redirect examination:

I suppose some of the fence around square 939 was standing later than 1862 or 1863—a great deal later—the part up towards where those shanties were built and the part up towards the corner of 10th and B streets. I think there was some fence left standing about where the Half-way house was, but I don't remember what. It was not all taken away together; it was not all taken away at one time; they just took what they could get handy.

JAMES LUXON, a witness on behalf of the plaintiff, testified as follows:

I am a messenger in the equity court of this building, and I have lived in Washington all my life, fifty-four years nearly. I know the square between B and C and 9th and 10th streets northeast very well. I first knew it in 1849, when I was six years old; I can remember that. My mother used to be a very particular friend of Tyler Baldwin's wife, and she used to take us out there to see her. I used to go out there and take a little wagon and bring peaches home from a place right across the street, where a Mrs. Dumphrey lived. My mother was well acquainted with her. I remember that square from about 1849 to 1853. We did not go out there after that. We used to go out there once or twice a week to see old Mrs. Dumphrey and she died in 1853. She lived diagonally across from the Baldwins on 10th street; it was not cut through then; I think it must have been C street. The Baldwins lived then on the lot south of this lot, right back of East Capitol street. I think it was B street. At this time, on C street and on 10th street, in square 939, I remember very distinctly that it had a paling fence, and there was a house stood nearly on the northeast corner of the square, and there was some cherry trees there. There was an old gypsey horse-trader used to live there, and some time after that they built two houses right below him on this same square on 10th street between B and C. When I knew this square it was generally planted with corn. It was cultivated by old man Tyler Baldwin and his wife. The whole square was enclosed all the time that I knew it.

Cross-examination:

My mother used to take us out to the Baldwins' and out to Mrs. Dumphries' also. I was out there once or twice a week, I think, from 1849 to 1853. I am not positive about 1853, but I know this thing commenced about 1849 and went along for two or three years. It might have been until 1852 or 1853 or 1854. It went on until I

was nine years of age; probably a little later than that;
52 probably until I was 12 years old. I am not positive about the years. My remembrance about the place from 1849 to 1853 is that the whole square was enclosed. As to whether the north end of the square was enclosed, it had a paling fence, but I don't know whether it was in 1849; it was in between that time, 1849 to 1853. The paling fence was on the north side of it and the entire C Street front, and it ran down some part of it on the 10th Street front, so that the north end of the square had a paling fence along the whole line of C street and down to the house; it just passed the house, and then they built two more houses south of this little house during the period that I was going out there. I don't remember whether there was a partition fence from the north end of the square extending from 9th to 10th streets, just below the Gypsey house. I don't remember what kind of a fence was on the rest of the square, because we would always go the C Street way; but I know it was enclosed, because I have seen old man Tyler Baldwin in there dropping corn. I could not see B street from C street; I was too young. The ground was a little higher on C street than it was on B.

Doctor MICHAEL J. GRIFFITH, of the register of wills office, testified, on behalf of the plaintiff, that he had made search in that office and had found no other will of William Brent than the nuncupative will above mentioned.

Thereupon the plaintiff's counsel offered certain deeds in evidence (which were admitted subject to the same objections and exceptions taken to the plats and deeds previously offered and read in evidence to the jury), to wit:

Deed from John Carroll Brent to Morris Downs, dated August 6th, 1868, recorded in Liber 565, page 283, conveying that lot or piece of ground situated in the said city of Washington known on the plat thereof as lot number 3, in square 939.

Deed from Morris Downs to Robert C. Campbell, dated June 5, 1879, recorded in Liber 909, folio 481, conveying lot number 3, in square 939, fronting 57 feet 11¾ inches on North B street east by 102 feet 9 inches, the full depth of said lot.

Deed from Robert G. Campbell to Morris Downs, dated September 5, 1881, recorded in Liber 981, folio 405, conveying by the same description lot 3 fronting on B street with the same depth.

Deed dated October 28, 1881, recorded in Liber 988, folio 170, from Morris Downs and wife to James A. Ashley, Nehemiah B. Ashley, the present plaintiff, Sarah E. Beardsley, and Mary A. Breckenridge conveying lot 3, in square 939.

ELLA T. DOWNS, a witness on behalf of the plaintiff, testified as follows:

Morris Downs was my father. He died on the 18th of December, 1896. I am living now with my mother, at 920 B street northeast Our house was moved where it is now in 1882. I was born in 1872

We were living in the house when it was moved. I don't know where it was moved from. It was near the corner of 9th
53 street, and it was moved up, I think, two or three lots. Where our house is now is twenty feet wide, and there is a seventeen-foot lot; then there is another lot between, and there is a telegraph pole below just where our house was. There is something like thirty-seven feet between where our house used to be and where it is now. The telegraph pole is still there; just where our house was before it was moved. There is no other telegraph pole on the square. There are trees there, and the fo-rth tree, counting from the corner of 9th and B streets, is in front of where our house was before it was moved. The tree was right opposite our front door. The house was moved only once.

Cross-examination:

We staid in the house while it was moving. Our house now is in the centre of the square; it may be nearer 9th than 10th.

Plaintiff's counsel here offered in evidence a release from William R. Woodward, trustee, to Robert G. Campbell, dated October 6, 1879, recorded in Liber 925, folio 152, releasing the trust referred to in the deed from Downs to Campbell of lot three (3), in square 939, giving its frontage on B street and its depth as in those two other deeds.

At this point defendant's counsel objected to the deed from Morris Downs and wife to James A. Ashley and others, making, besides general objection, the special objection to the admissibility of the record on the ground that, it being the deed under which the plaintiff claimed title, the original of it must be produced, and the record of it was not evidence.

Thereupon plaintiff's counsel said they would produce the original deed or account for its absence.

GEORGE H. SHAFFER, a witness on behalf of the plaintiff, testified as follows:

I am chief clerk of the land office of Maryland, and have been in the office since 1869. I have the custody of and have produced here all the papers in the old chancery suit entitled Thomas Morris and others *vs.* James Greenleaf, which was pending in the high chancery court of Maryland in 1806. I have also in my custody and have produced here a record of all these proceedings in which the papers in the case have been copied and entered. In the year 1894 I made a copy of some of those papers from that record and certified it.

(The witness here identified a paper which was shown him as a certified copy of the papers in question, and said that he had made that and had compared it with the originals himself, and that to the best of his knowledge the copy was correct.)

The copy so certified was then offered in evidence, defendant's counsel making no objection thereto, except their general objection and exception to all the plaintiff's evidence.

54 The papers so put in evidence are in substance as follows:

The plaintiff further offerred in evidence the record of a chancery suit in the high court of chancery of Maryland, instituted in 1806, between Thomas Morris and others against James Greenleaf, Robert Morris, John Nicholson, George Simpson, Edward Fox, Henry Pratt, and others, showing the appointment of John Kilty and Josiah M. King, by decree passed October 19, 1806, as trustee to sell interest of the said parties to said suit in and to squares 777 to 1076, both inclusive, in the city of Washington, in the District of Columbia; that said trustees reported the sale by them to James Davidson of lot 18, in square 939; that in a schedule accompanying their report of said sale said lot 18 is described as containing 4,343½ square feet, and that lots 4, 5, 6, 7, 8, 9, 16, 17, and 19, in said square 939, were in said proceedings sold by said trustees to United States Superintendent Thomas Munroe.

At the request of defendant's counsel, another paper, which was found among the papers of said case and which was entitled "Exhibit 5," was put in evidence by plaintiff's counsel. It is headed "A view of the squares conveyed by the commissioners of the Federal building to James Greenleaf for 1,000 lots."

In reference to square 939 it reads:

"Original proprietor, George Walker."

"Amount of the whole, square feet, 112,360.

"Lots belonging to the commissioners, on a division with the original proprietor and selected by Morris and Nicholson, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19.

"Amount of lots, square feet, 56,180.

"When divided, 13th October, 1792.

"When recorded, 13th October, 1792."

JAMES T. CALLAN, a witness on behalf of the plaintiff, testified as follows:

I have lived in Washington since 1842; knew Tyler Baldwin in 1843. He was living then at the corner of B and 9th streets. I have known of square 939 since 1843. At that time the north part was fenced off by itself and a man by the name of Lowe lived there and had charge of it a little while. All the other part from that line down to B street was fenced in by a post-and-rail fence and Tyler Baldwin cultivated it sometimes. Lowe lived there in the old house which is there now on 10th street, near the corner of C. That fence remained until the soldiers came, somewhere along in 1862, I think. The fence looked old when I first saw it. I remember the Half-way house, which was built a little before the war ended, on B street near 9th. Sprague built it and sold it to Downs, who moved it on another lot further east and then moved it again. I remember four more cabins on 9th street, just about the breaking out of the war. The square was fenced in and Tyler Baldwin cultivated it every season until the soldiers came and tore down the fence.

55 Cross examination:

I was born August 10th, 1830. When I first knew this place, in 1843, Lowe lived on this place on 10th street near C—the north end of the square. At that portion of the square there was a fence running across from 9th to 10th below the house. The Half-way house was about forty feet from the corner of 9th street. Downs bought it in 1866. The first time he moved it about forty or fifty feet. About six months or a year later he moved it still further east. The house has been remodelled altogether. The shanties were about the middle of the square. They are not there now. Mr. Baldwin lived at 10th and B streets, not 9th and B. The shanty nearest the Half-way house was about 75 or 80 feet away. The shanties were located on 9th street, about what I would call the upper end of 9th—that is, back of this cross-fence I first spoke of on the north end—a little south of that on 9th, above the center of the square. They remained there quite a length of time; I don't know how long.

THOMAS H. FITNAM, a witness on behalf of the plaintiff, testified as follows:

I am an examiner in chancery, and the paper now shown me (the lease put in evidence from Mrs. Baldwin to Morris Downs) was produced before me in the case of Fowler *vs.* Slater by Mr. Mackey while the witness Mary S. Bowden was on the stand. From my notes I can say positively that Mrs. Bowden produced it.

Mrs. KATE HOWARD, a witness on behalf of the plaintiff, testified as follows:

I have lived at the southeast corner of 9th and B streets, this city, for about forty years—right across the street from square 939. When I first went there a part of square 939 was fenced in and there was corn on it. It was fenced in from B street. There was nothing on the north part of the square. The Gypsey house was there on 10th street near C, and it had a fence around it. Mrs. Baldwin continued to raise corn or other crops on that square until the war broke out. There was a fence around the Half-way house when it was built, and the soldiers took it away about the second year of the war. Nick Jones lived in a little house about ten feet from the Half-way house. Downs bought the Half-way house and built a house for himself a little further up. Then he bought another lot and moved onto that.

MORRIS A. DOWNS, a witness on behalf of the plaintiff, testified as follows:

I am the son of Morris Downs and live at 920 B street northeast. I am 22 years old and have lived in that house all my life. It first stood fifty feet west of where it is now. They moved us as well as the house. There is a telegraph pole right where the corner of the house was. The finest tree on that square was right opposite our front door before the house was moved. I know Aaron Bradshaw.

56 Prior to 1890 he had not possession of any part of that square. In 1890 Mr. Ashley came out one morning and knocked the fence down. I saw Mr. Bradshaw directing the putting up of that fence. Some little time after Mr. Ashley removed the fence Mr. Bradshaw put a house on the corner of 9th and B—a little one-story house—which it took him two days to build. In building it the men worked in the evening in the rain.

"Q. What, if any, steps did you observe taken by Mr. Bradshaw to prevent Mr. Ashley from interfering with the building of the house?

"A. The night of the first day when they started to build the house, I guess it was up about five feet, and every one around there was expecting Mr. Ashley to come out and tear it down before the roof was gotten on it, and there was quite a crowd collected around that evening to see the fun; there was quite a crowd of men inside this building and sitting around the wall; some of them had clubs in their hands; sort of pieces of plank, you know; they would pick up boards, you know."

Mr. MATTINGLY: I object to this testimony.

The COURT: Perhaps the character of the defendants and their occupation might have some relevancy.

After discussion the objection was overruled by the court, and an exception noted.

Witness resuming:

It has been about fifteen years since this removal of our house took place of which I speak.

Cross-examination:

Our house is now on B street nearer 10th than 9th. The wire fence that Bradshaw put up in 1890 started at the corner of 9th and B street within 17 feet of our present lot; it ran up 9th street, I should say, about 150 feet, and then eastward, it ran east, and ran from B street north, making a full enclosure. I saw Bradshaw out there directing where to put posts, &c.; he was superintending the job. It must have been a year and a half or two years after that, I guess, before Mr. Ashley tore that fence down. Mr. Ashley is a patent lawyer, living here in Washington. The little brick house was put up not exactly on the corner of 9th and B; it was on the building line of B street, right at the corner of the lot. He afterwards put up a closed board fence, enclosing the place around the same place where he had his wire fence, along B and up 9th street to within 17 feet of our house, and then about 150 feet of 9th street. This was about 1893 or 1894.

WILLIAM B. CHILTON, a witness on behalf of the plaintiff, testified as follows:

William Brent was my grandfather. My mother was Virginia Brent, now Mrs. Chilton.

"Q. What was your relationship to Francis and Edward Brent?"

57 Counsel for the defendant objected to this testimony on the ground that in order to entitle the witness to be heard for the purpose of proving pedigree his own relationship must first be shown by the testimony of some other witness than himself.

The court stated that on the proffer of counsel for the plaintiff to prove the relationship of witness he would admit the testimony subject to exception, and should the relationship of witness not subsequently appear the testimony would be stricken out.

Counsel for the defendant excepted, and said exception was duly noted on the minutes of the court before the jury retired.

Witness resuming:

Francis Brent and Edward Brent were my uncles—my mother's brothers. They are both dead; Edward Brent died in December, 1864, and Francis Brent died in the summer of 1874. Francis was married, and left one daughter, who is also dead. She never married. She was twenty-six or twenty-seven years old when she died; her name was Julia Brent. Neither Edward Brent or Francis Brent left a will.

At this point counsel for defendant further objected to this witness' testimony on the ground that it is not sufficient for a witness to state that some one was his uncle; that in order to prove collateral relationship it is necessary to prove the marriage of the common ancestor, and to trace the descent by proper steps; that the witness had simply testified to a conclusion of the law, which may or may not be correct, depending on certain steps of marriage, birth, and the like, all of which ought to be proved; that a mere general conclusion from these several events in the family history is not competent.

The court in overruling the objection stated that the court thought the counsel for plaintiff had proven all these facts in the equity cases submitted. Counsel for defendant thereupon entered an exception, and said exception was noted upon the minutes of the court before the jury retired.

Witness resuming:

I was born in 1856 and my recollection of my parents goes back to about 1860. After that time I can testify that they lived together in the relation of husband and wife and were recognized as husband and wife by the community.

Thereupon JAMES H. FORSYTH was recalled by the plaintiff's counsel and testified that he had produced from the surveyor's office Subdivision Book C. H. B. No. 1. Plaintiff's counsel offered in evidence from said book what purports to be the original subdivision of square 939, made in May, 1869, by Mary Baldwin, Sarah C. Bradley, Mary F. Eakle, John Carroll Brent, trustee, John Carroll Brent, Winifred Lowe Smith, Carrie A. Bowden, and William T. Smith.

Opposite the names of the parties whose signatures purport
58 to be appended to said subdivisions were what purported to be the signatures as witnesses of William Morgan, William B. Chase, Lewis P. Himes, and S. B. Chapin.

Defendant's counsel objected to the introduction of this subdivision. Mr. Forsyth testified, in answer to interrogatories propounded by plaintiff's counsel, that he knew William Morgan and William B. Chase, and that they were both dead.

Thereupon the question whether said plat should be admitted in evidence was reserved.

HENRY F. BEARDSLEY, a witness on behalf of the plaintiff, testified as follows:

I reside in Montrose, Susquehanna county, Pennsylvania. I am the plaintiff's brother-in-law, having married his sister, Sarah E. Ashley, on the 7th of June, 1865. She died November 28, 1890. I knew Joseph R. Ashley.

Counsel for the defendant objected to the testimony of the witness on the same ground as to that of Mr. Chilton, and on the further ground that the witness was not a member of the family, merely a connection. The court overruled the objection, and counsel for the defendant thereupon entered an exception, which is duly noted on the minutes of the court before the jury retired.

Witness resuming:

Rollin T. Ashley was the father of Joseph R. Ashley. He was married. His wife's name was Roxanna A. Ashley. I know the handwriting of Rollin T. Ashley; have seen him write; have corresponded with him, and am familiar with his handwriting. I have an old family Bible here, on one page of which there are entries all in the handwriting of Rollin Ashley, except one, which is in the handwriting of his son James A. Ashley, who is at present in court.

The plaintiff's counsel thereupon proceeded to read the entries identified by the witness as being in the handwriting of Rollin Ashley. Before they were read counsel for the defendant objected to the attempted proof of pedigree in the way proposed. The court overruled the objection, and counsel for the defendant thereupon entered an exception; which exception was duly noted on the minutes of the court before the jury retired.

The witness thereupon read to the jury the following entries from the said Bible:

"Rollin T. and Roxanna Ashley were married January 24, 1830.
"James Ayres Ashley was born Nov. 20, 1830.
"Joseph Ralph Ashley was born September 10, 1832.
"Nehemiah Blackman Ashley was born Sept. 9, 1834.
"George Kennard Ashley was born Dec. 28, 1836.
"Sarah Eliza Ashley was born February 26, 1839.
"Emiline Burrows Ashley was born February 20, 1844; died April 19, 1859.

59 "Horatio Hayden Ashley was born December 12, 1854; died December 29, 1858, aged three years, nine months, and seventeen days."

Witness resuming:

I know James Ayres Ashley, who is in court. I knew Joseph Ralph Ashley. He died March 22, 1875, unmarried and intestate. He was never married. I know Nehemiah Blackman Ashley, the plaintiff in this case. He lives in Scranton, Pennsylvania, and is in bad health. I knew George Kennard Ashley. The last time I heard of him he was in Brooklyn, New York, a few weeks ago. Sarah Eliza Ashley is my wife. Mary Adaline Ashley was born May 28, 1851, and is living. She is the wife of the Rev. Dr. Breckenridge, of Brooklyn, N. Y., and is now Mary A. Breckenridge. I knew Emiline Burrows Ashley. She was never married, and died in 1859.

Counsel for the defendant thereupon entered an additional objection to the first six entries in said Bible on the ground that it is apparent from an inspection of them that they were all written at the same time and must have been copied from something else into the book in evidence, demonstrating that said book is not the one in which they were originally made.

The court overruled the objection, and counsel for the defendant thereupon entered an exception; which exception was duly noted on the minutes of the court before the jury retired.

Witness resuming:

The entry here which is not in Rollin Ashley's handwriting is one which relates to the birth of Mary Adaline Ashley. Rollin F. Ashley and Roxanna Ashley had no other children than those who are named here.

Cross-examination:

I don't know who made those fresh ink lines on that page; I have not seen that volume for many years; it has been at the house of my brother-in-law, James Ashley.

JAMES AYRES ASHLEY, a witness on behalf of the plaintiff, testified that the last witness, Henry F. Beardsley, married witness' younger sister, Sarah Eliza Ashley; that witness' father was Rollin T. Ashley, and that his mother's name was Roxanna Blackman.

Counsel for the defendant objected to the testimony because in order to prove family history it is necessary to begin with the marriage of the pair from whom the witness descended. There must be proper steps taken.

The court overruled the objection. Counsel for the defendant thereupon noted an exception, which was duly noted on the minutes of the court before the jury retired.

60 Witness resuming:

I can certainly recall my parents as far back as 1833 or 1834; they recognized each other as husband and wife and were recognized as husband and wife in the community. I have seen my father write thousands of times, and the entries in the old Bible, which has just been put in evidence, are in his handwriting. I have no knowledge as to the fresh ink marks on the page here between these entries. My father and mother had eight children, five of whom are living. Emiline Burrows Ashley died in 1859; Horatio Haydon Ashley died when he was nearly four years old. Joseph R. Ashley died March 22, 1875; he left no children; was never married; he left no will. My father died September 16, 1888, and my mother died in November of the same year. Joseph R. Ashley lived in Washington until he died; he came here in 1865.

(By PLAINTIFF'S COUNSEL:)

Q. "Mr. Ashley, what lots, if any, did your brother take possession of after this conveyance to him of Ingle and Mrs. Baldwin?"

To this question defendant's counsel objected on the ground that the deed is the best evidence. The court overruled the objection and counsel for defendant took an exception, which was duly noted on the minutes of the court before the jury retired.

Witness resuming:

There were certain lots on 9th street, beginning at the southwest corner of the square and running northward on that street. At that time there was a fence running east and west and along the northern border of the purchase which he said he had made, that fence, to the best of my recollection, extending back the depth of the lot. It was a post-and rail-fence. On the two northerly lots of which my brother took possession there were habitations—cheap structures—occupied by tenants from whom my brother collected rent to his death, when I collected rents afterwards. The most northern of these two houses was occupied by Margaret Walker first and by Thomas Johnson afterwards. There was a double cabin near the line between lots 8 and 9, which, I think, was astride the line, and that was occupied by Anthony A. Henry and others, and the most southerly one was occupied by Dennis Harrison. There was a more pretentious house, the largest of the three; collected rents of those tenants as late as May, 1889, I think. My brother died in March and I went out there first in April following. I went out with him sometimes when he collected rents and saw money paid to him. As to other acts of ownership exercised over this ground after my brother bought from Mrs. Baldwin and others, he collected some small sums of money sometimes for sod. Harrison also made an allowance for the use of the lot south of his, where he pastured some cows. The sod was taken from the lots not occupied by the cabins; those extending from number 8 down to 9th and B streets.

We sold the sod to a man named Briscoe. The right
61 of pasturage which we gave Harrison for a consideration covered all the sod from number 8 down to B street, the same lots from which we sold the sod. The right of pasturage was given to Harrison up to the time the sods were sold, which was in 1886. As to how early we gave him that right, I cannot fix that date exactly. Harrison had the right of pasturage for several years prior to 1886. He pastured his cattle mainly out on the commons, and morning and evening he would allow the cattle to graze on these lots; I have seen them there. On account of something that I had heard I went out to these lots on the 28th of March, 1889, as I recollect it; I found some posts and some wires enclosing a portion of the lot which my brother had purchased; all the portion below the north line of lot 6, I think; I mean the sublots as they have been recognized since 1869; the pencil numbers. The wire fence included also lot 3, which was not part of my brother's original purchase and which he did not purchase at all. We gradually demolished that fence; that was February 21, 1890. Mr. Bradshaw was there and protested against it. I saw Bradshaw again in August, 1891. At that interview I, as part owner and as representing the other owners, demanded possession of him of that ground which was inclosed. He replied that his only connection with it was as lessee of Mr. Walter; that he held by a duly executed lease. Then I told him that it was as lessee and as the representative of Mr. Walter that we demanded possession, I and my associates, and he replied, "Of necessity I refuse." I am referring to all the lots that were enclosed, 3, 4, 5, and 6. He had possession of all four of them.

After I broke down that fence the property remained unenclosed a few days. Three or four days afterwards there was a small structure erected on the corner; a brick structure. I think there was no enclosure then; there was an enclosure made afterwards, but I can't determine just when.

The cabins that I have spoken of when I first saw them had the appearance of having been there for some years.

Cross-examination:

Myself and others did enclose with a fence the three northermost lots just north of this disputed ground.

At this point the plaintiff's counsel offered in evidence (subject, as was agreed by counsel, to the same general objection that has been made to the other deeds) a deed from Clementina Brent to Morris Downs, dated November 24, 1881, recorded — Liber 991, folio 81, and conveying lot 28, in Clementina B. and Emily C. Brent's subdivision of lots A, B, and D, in square number 939.

Also the record of a subdivision made November 7th, 1877, by Clementina B. Brent and Emily Brent of sublots "A," "B," and "C," square 939, in the sublots 27, 28, and 29 respectively, said sublot 29 being the west 17 feet $11\frac{3}{4}$ inches front of original lot 2, as

per the pencil numbers, and said lots 28 and 27 having each
62 a frontage of twenty feet, all on B street and with the full depth of said lot.

ELLEN T. DOWNS, a witness on behalf of the plaintiff, testified as follows:

I am a widow of the late Morris Downs, and have lived in Washington since 1868. At that time Morris Downs had a place called the Half-way house on the corner of 9th and B streets northeast, a one-story frame and one room back of it. I never lived there. We boarded with his sister until he had a house built. The Half-way house was used at that time for a grocery store. Mr. Downs tore down the Half-way house and built the house where we are living now and where we have been living ever since in the same house, which was not completed until 1869. We sold to Mr. Ashley, this present Mr. Ashley. There was a Mr. Ashley bought from Mrs. Baldwin. I lived there and saw it myself. I was with my husband when he bought the place that he sold to Mr. Ashley. I cannot locate it here; it was where Lawyer Brent had an office, down near this building outside. I went with my husband when he was negotiating with Lawyer Brent to buy the ground on B between 9th and 10th streets.

"Q. What lot was that?

"A. Lot 3, square 939."

That was the lot my husband built a house on when he sold the Half-way house, the lot he bought from John Carroll Brent. My husband first built a little northeast of 9th street, and then Mrs. Baldwin claimed it was a little on her ground; it was not a house then; it was just the joists and studding for rooms. It was 58 feet from 9th street to where he bought from Lawyer Brent. He bought 58 feet by 112 from Lawyer Brent. There is a tree now to show where the house stood on lot 3; it is the fourth tree from 9th street on B. There is no prettier tree on B street on that square. That tree was right by the door of our house. There is a telegraph pole where the house stood. Every one knows that lot. Last Saturday I pointed out the tree and the telegraph pole that I have spoken to Mr. Beardsley and Mr. William Rothwell.

I know my husband's handwriting; he was not a good writer, but could sign his name.

The witness, being shown the lease heretofore offered in evidence between Christopher Ingle and Mary Baldwin and Morris Downs, dated June 15, 1866, stated that the signature of Morris Downs to that instrument is in her husband's handwriting. Both the witnesses to that instrument are dead.

When my husband occupied the Half-way house he paid $8 a month rent to Mrs. Baldwin. It was a sutler's shop before and he bought it from a man named Sprague. The Mr. Ashley that bought where the Half-way house was died suddenly, and this present Mr. Ashley bought from us. After I sold lot 3 to the Ashleys I bought from Miss Clementina Brent part of lot 2. There was a 20-foot lot

and Mr. Murphy's was 58 feet on B street, and then there was
63 about a 20-foot lot that belonged to Miss Clementina Brent, or, anyway, the Brents, and there is a 17-foot lot this side. We bought between the 17-foot lot and the 20-foot lot from Miss Clementina Brent, and that is where the house is now. We bought it in 1882. We sold to Mr. Ashley in 1881 and paid rent to Mr. Ashley while the house remained on his ground.

The nearest house to the Half-way house was on 9th street and was occupied by a colored man named Nick Jones. He lived right next—I don't think there was more than a partition run—and Jones lived right next to it on 9th street. I think the Half-way house ran the whole way back, 75 feet, because there was no door on 9th street. The Jones house was just at the end of the 75 feet, because Mr. Downs' Half-way house ran the whole 75 feet and Jones' was right adjoining. My husband tore the Half-way house away from there in the latter part of 1869. Jones' house remained there after that, how long I could not say. There were other colored people living there on 9th street in these little houses—a man named Harrison and one named Brown and one named Addison. Then there was one named Chilton, but his daughter's name was Ann Becky Johnson. I know those little cabins were moved when Mr. Ashley bought, but I could not say how long. After I moved my house over on lot 2 there was no fence around lots 3, 4, 5, and 6 until Mr. Bradshaw put up the barbed-wire fence. I saw the colored man put it up and he was around. I saw him put the little brick house on the corner that is there now. It took him two days to put it up.

Counsel for the defendant objected to the testimony of witness in reference to the time of putting up the brick house. The court overruled the objection, and counsel for the defendant thereupon entered an exception, which was duly noted on the minutes of the court before the jury retired.

Witness resuming:

I saw men around the house that night when it was being built; they had some kind of weapon in their hands; they were inside, and they called it a fort; they said they were going to hold the fort. The street was crowded with people waiting.

Cross-examination:

I was married in 1868, and was acquainted with this square before, but I am only speaking from 1868.

"Q. Did each of those houses (the shanties on 9th street occupied by the colored people) have its own separate enclosure?

"A. Oh, yes; they had pigs and chickens all running back there towards Mrs. Eakle's and Mrs. Bradley's places and up that way."

After the Half-way house was taken away there was a roadway over the hill back of the place on which the boys used to sleigh-ride from Mrs. Eakle's stable. It was not a stable then; there was

some colored people living in it. The Bradleys and Eakles
64 would go right up that hill after they got a carriage. The roadway was just 75 feet back from B street where they drove up; just about where the Nick Jones house stood.

We bought first from Mr. Carroll Brent in 1868, right after we were married, and then my husband put up this house that we are living in now. That was in 1869; just after we bought from Carroll Brent. It was just four rooms, and we moved into it before it was completed. In 1881 we sold to the Ashleys, and in 1882 we bought lot 2. We moved the house in 1882; a man named Collomore moved it with one horse while we were living in it. We moved from lot 3 to lot 2; we moved it more than 17 or 18 feet. We had the whole place fenced in from 10th street down to where the house was.

HENRY E. DAVIS, a witness on behalf of the plaintiff, testified as follows:

I was assistant attorney for the District of Columbia from July, 1885, to November, 1889, and am familiar with the volumes of the printed pamphlets purporting to be ordinances of the city of Washington. I think I had occasion to use them every day during that time; I had repeated occasions to use them in the courts of this District—not only in the police court, but in this court—and have often used them. I never heard any objection made to their authenticity. I can give illustrations of their use which I think may be taken as typical. I had occasion once to prosecute certain barbers for violating a certain law against keeping barber shops open on Sunday. There was either no account of that law at all or no adequate account of it in Webb's Digest. It was a test case and I convicted the defendant upon one of those bound volumes. I read the law from the book, and it was the only presentation I made of the law. Another case was the case of Harry Stamford, who was prosecuted for keeping a drug store open on Sunday. In Webb's Digest the law as it stood was the law of the corporation of Washington. The defense was made that the law as printed in one of the bound volumes to which you refer did not appear to have been signed by the mayor, and the general term held it not to be a law because it did not appear in that bound volume to have been signed by the mayor. However, you will find in Webb's Digest a provision which recognizes the publication of these pamphlet laws, and provided that the opinions of the attorneys of the corporation shall be printed and bound up with them at the close of the year for the guidance of the mayor and other officers of the corporation and common council.

Thereupon the defendant's counsel moved to strike out all the witness' testimony on the ground that it was not competent. The court overruled the motion; to which ruling defendant's counsel excepted, and the exception was duly noted upon the minutes of the court before the jury retired.

Witness resuming:

These books are a part of the official library of the Commissioners

of the District of Columbia, and they are resorted to always
65 without hesitation as containing the municipal laws of the cities of Washington and Georgetown and levy court of the county. They are accepted as authentic and have been acted upon as such.

Thereupon defendant's counsel renewed their objection to the witness' testimony, alleging the further ground that this alleged ordinance is on its face a private ordinance, and not one of those general in its character, which may perhaps be proved under a more liberal ruling. The court overruled the objection; to which ruling defendant's counsel excepted, and the exception was duly noted on the minutes of the court before the jury retired.

GOFF A. HALL, a witness on behalf of the plaintiff, testified as follows:

I am assistant assessor of the District of Columbia, and have held that position for eight or ten years. I have been connected with the assessor's office about fifteen years. We have in that office the custody of all the books there showing the assessments of real estate in the District of Columbia from the beginning. They go back to 1803. I have made up from those books a list of the assessments on all the lots in square 939, in this city, showing the amount of the assessment, to whom assessed, the number of the lot, and when the tax was paid. I have this list here, and I have in court also the books from which it was made.

At this point plaintiff's counsel stated that they proposed to read the list in evidence. The witness stated, in answer to questions propounded by the defendant's counsel, that the list did not show the valuation of the lots or the tax rate; that the general assessment books would show that.

Being further interrogated by plaintiff's counsel, the witness stated that the pencil numbers at the right-hand side of the list referred to folios in the books, so that the books could be referred to conveniently; that there is nothing on the books to show who paid the taxes, except that the taxes are assessed against certain persons.

After further inquiry by counsel on both sides the court decided that the witness might make up a complete list and produce it the next day, and the court ruled that the list when produced again might be put in evidence by plaintiff's counsel; to which ruling counsel for the defendant excepted; which exception was duly noted on the minutes of the court before the jury retired.

Witness' direct examination resumed:

I have here the general assessment book from 1829 to 1836—the tax ledger from which we make the bills. The assessments are made once in five years. There are no other records of assessments that I know of. The assessors have field books and copy from them

into the general assessment books. There is not any field
66 book in the office to correspond with this book. I have not been able to find any for years. In this book the first column gives the number of the square, the second column gives the number of the lot, the next column gives the square feet in the lot, the next column the rate of assessment—one-fourth of a cent a foot it is here—the next column gives the total amount of the tax, the next column the improvement, and the next the name of the person in whom the lot is assessed.

Thereupon plaintiff's counsel offered in evidence from said general assessment book three lines relating to lots 13, 14, and 15, in square 939, each containing 6,468 square feet and one-fourth of a cent per foot assessment, amounting to $16.00 on each lot, and in the column of improvements, opposite lot 15, $500, the only entry in the column of improvement- on the page, and opposite the three lots the name W. W. Lowe.

To the introduction and evidence of these entries from said book the counsel for defendant objected; but the court overruled said objection; to which ruling the defendant, by his counsel, excepted; which exception was duly noted on the minutes of the court before the jury retired.

The witness then produced the tax book for 1883, and from it read in evidence an entry of lots 13, 14, and 15, in the name of William W. Lowe, the assessed value of each lot, $16, and on lot 15, this improvement, $500. I have not traced that improvement on lot 15 down to date to see whether the house has been moved off that lot on the assessment book or whether it has been assessed on lot 15 since that time.

At this point the further examination of witness was suspended until the following day.

WILLIAM ROTHWELL, recalled and further examined on behalf of the plaintiff, testified as follows:

At the request of Mr. Beardsley, I have made certain measurements on this square 939 since I was on the stand. Mrs. Downs showed me a telegraph pole and a tree on B street, and I measured from the corner of 9th and B street to that pole and to that tree. I located the corner of 9th and B from the surveyor's nail driven into the pavement. I saw the surveyors surveying a lot on Mass. avenue just a day or two before and I saw where they were putting a mark down, and I found a nail right there at the corner of 9th and B. I found the distance from the corner of 9th and B to that fourth tree, counting from 9th street to B, 64 feet 8 inches, to the centre of the tree. The telegraph pole is nine feet east of the tree, still further over on lot 3. The present residence of Mrs. Downs is 75 feet 6 inches from the tree—from the tree to the west side of Mrs. Downs' main building.

I also measured from the corner of C and 10th street northeast to the old building, the Gypsey house. I fixed the corner of C street by the buildings on each corner, taking the line through.

Counsel for the defendant objected to the witness giving
67 testimony as to measurements because he was not a surveyor, and it was uncertain whether he had the proper beginning point for measuring.

The court overruled the objection, and counsel for defendant entered an exception, which was duly noted on the minutes of the court before the jury retired.

Witness resuming:

The distance from the corner of C and 10th streets to the main building of the Gypsey house is 96 feet 8 inches and 84 feet to the kitchen. I also measured from the south side of Mrs. Eakle's house to the corner of 10th and B streets; the distance is 186 feet and 6 inches. I measured from Mrs. Downs' house to the corner of 10th and B streets and it was 78 feet and 8 inches—that is, to the east side of Mrs. Downs' house; where the house stands now. The main portion of Mrs. Downs' house is fourteen feet wide.

Cross-examination:

I am a contractor, plumber, and gasfitter. I am a general contractor. I made these measurements under the supervision of Mr. Beardsley, who was with me when I made them.

Thereupon defendant's counsel stated to the court that they did not consider this as competent evidence to show the locations of certain buildings on lots and with reference to lots; that there is a statute in force here which makes the surveyor really the exclusive person to give official opinions on that subject and make official measurements, and that on that account they entered an objection to the evidence. The court overruled the objection, and counsel reserved an exception, which was duly noted on the minutes of the court before the jury retired.

NATHANIEL ADDISON, a witness on behalf of the plaintiff, testified as follows:

I am living on Good Hope hill now, and have lived in Washington ever since the time of the war. I staid here until about 1890. I have lived in 9th street between B and C northeast—on the east side of 9th street. I paid rent to Mrs. Baldwin for a number of years, and afterwards there was a gentleman came in and bought it by the name of Ashley. I rented from him and paid him rent until I bought a little home and moved over there. I paid rent there from some time during the war until 1890. I lived, I guess, as near as I can come to it, about the middle of the square—pretty near. Then the rest of the folks lived south of me. There was a party—an old gentleman lived there—him and his family—by the name of Nick Jones used to rent from Mrs. Baldwin at the same time, but his house used to sit right opposite to where they have got that little brick there. I remember Mr. Downs' Half-way house; have taken mamy a drink of whiskey out of it. Jones' house ran

back up the hill with a little fence around it—up 9th street.
68 From Jones' garden to B street, I guess, it was a hundred feet or more.

I used to pasture my cow right along there until I moved away from there, and so did old man Dan. Harrison. Mr. Ashley gave me permission to pasture the cow. I pastured her all along there back of Mr. Downs' place and until I moved away from there, in 1890. I had a cow pasturing there myself three or four or five years.

Cross-examination:

I had a fence running around the back part of my house, but I could not close the front street. There was a time when Mrs. Eakle and Mrs. Bradley brought wood and coal in from 9th street. They made a road there afterwards. There was none there first.

Redirect examination:

That roadway that was used by the Eakles and the Bradleys began to be used there only here lately after everybody had moved away—a little before I moved away from there.

Recross examination:

I remember Mr. Hughes hauling wood and coal up over that road to Mrs. Eakle's and Mrs. Bradley's after everything passed away—I mean there wasn't nobody working it or nothing at all then. It was open. There wasn't no fence around it is what I mean.

ANN TOLSON, a witness on behalf of the plaintiff, testified as follows:

I lived on the square between B and C and 9th and 10th streets northeast four years, on Mrs. Baldwin's lot. I have been away from there about fourteen years; went away when Lovejoy school was just building. I used to go to Mrs Howard's, on the corner of 9th and B, on the south side, every week and do her washing. I would come out of Mrs. Eakle's back lot, where she and Mrs. Bradley lived there together. I worked for Mrs. Eakle until she moved away up 9th street. I would come out of her back gate and come on Mrs. Baldwin's land, and then come down the hill, and I had to come from my house to my uncle's. That was on Mrs. Baldwin's lot. Nick Jones is my uncle. He lived as close to Mr. Downs' store as where that gentleman sits, almost. He was still there when I moved away. The store was not torn down then.

Cross-examination:

My uncle, Nick Jones, is living. I have not seen him for a month. He lives on B street with his daughter.

Sqr.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When p'd.	Fol.
939	1	$11	.....	William Brent	1834	Nov., 1826 ..	1
"	2	12	.....	"	"	"	"
"	3	16	.....	"	"	"	"
"	10	15	.....	"	"	"	"
"	11	11	.....	"	"	"	"
"	12	12	.....	"	"	"	"
"	13	16	.....	"	"	"	"
"	14	16	.....	"	"	"	"
"	15	16	.....	"	"	"	"
"	20	15	.....	"	"	"	"
"	1	11	.....	"	1826	May, 1833....	6
"	2	12	.....	"	"	"	"
"	3	16	.....	"	"	"	"
"	10	15	.....	"	"	"	"
"	11	11	.....	"	"	"	"
"	12	12	.....	"	"	"	"
"	13	16	.....	"	"	"	"
"	14	16	.....	"	"	"	"
"	15	16	.....	"	"	"	"
"	20	15	.....	"	"	"	"
"	1	10	.....	"	1830	May, 1833.....	20
"	2	12	.....	"	"	"	"
"	3	16	.....	"	"	"	"
"	10	14	.....	"	"	"	"
"	11	10	.....	"	"	"	"
939	12	12	.....	William Brent.....	1830	May, 1833.....	20
"	20	14	.....	"	"	"	"
"	Same lot, same			val. as 1830.....	1832	Aug., 1834	21
"		"	"	"	1833	Spt., 1836	22
"		"	"	"	1834	Oct., 1838	22
"		"	"	"	1835	Dec., 1838.....	22
"		"	"	"	1836	Aug., 1840.....	24
"		"	"	"	1837	Aug., 1840....	47
"		"	"	"	1838	Spt., 1840 .	48
"	1	9	.....	William Brent	1839	Aug., 1840....	47
"	2	10	.....	"	"	"	"
"	3	13	.....	"	"	"	"
"	20	12	.....	"	"	"	"
"	.	.....	.....	Same ass't, same lots & val. 1839.	1840	Spt., 1843	49
"	...	.....	.....	"	1841	Nov., 1844 ...	50
"	...	.....	.....	"	1842	Oct., 1844.....	53
"	..	.....	.....	"	1843	Oct., 1844.. ..	54
"	1	13	.....	William Brent.....	1844	Aug., 1846.. ..	70
"	2	14	.....	"	"	"	"
"	3	19	.....	"	"	"	"
"	20	18	.....	"	"	"	"
"	1	13	.....	"	1845	"	72
"	3	19	.....	John Carroll Brent	"	Ap'l, 1846.....	40
"	3	19	.....	"	1846	" 1847.....	40
939	1	13	...	William Brent	1846	Aug., 1847.....	73
"	2	14	.....	"	"	"	"
"	20	18	.....	"	"	"	"
"	1	13	.....	"	1847	Feb., 1847.....	"
"	2	14	....	"	"	"	"
"	20	18	.	"	"	"	"
70							
339	3	19	.....	John C. Brent....	1847	May, 1848.....	41

Sqr.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When p'd.	Fol.
339	3	$19	.....	John C. Brent	1848	Ap'l, 1850	46
"	1	13	.....	William Brent	"	Feb., 1849	83
"	2	14	....	"	"	"	"
"	20	18	.. .	"	"	"	"
"	1	17	.....	"	1849	Feb., 1850.....	95
"	2	19	.....	"	"	"	"
"	20	24	.....	"	"	"	"
"	3	26	.....	John C. Brent	1849	Apr., 1850.....	53
"	3	26	.....	"	1850	Oct., 1850	"
"	1	17	.....	William Brent.....	"	Aug., 1850.....	94
"	2	19	.....	"	"	"	"
"	20	24	.....	"	"	"	"
"	1	17	.. .	"	1851	Jul., 1851 ...	97
"	2	19	....	"	"	"	"
"	20	24	.....	"	"	"	"
"	3	26	.....	John C. Brent	"	"	56
"	3	26	.....	"	1852	Aug., 1852 ...	59
939	2	19	.....	William Brent.....	1852	Aug , 1852....	101
"	1	17	....	Wm. & Eliz. Brent	"	"	34
"	20	24	.....	"	"	"	"
"	4	26	.....	William T. Baldwin.....	"	Aug., 1852.....	102
"	5	26	.....	"	"	"	"
"	6	26	.....	"	"	"	"
"	7	19	.....	"	"	"	"
"	8	17	.. ...	"	"	"	"
"	9	24	.....	"	"	"	"
"	16	26	.....	"	"	"	"
"	17	19	.....	"	"	"	"
"	19	24	.....	"	"	"	"
"	4	26	.....	"	1853	Aug., 1853. ..	105
"	5	26	.....	"	"	"	"
"	6	26	.....	"	"	"	"
"	7	19	.....	"	"	"	"
"	9	24	.....	"	"	"	"
"	16	26	.....	"	"	"	"
"	17	19	.... .	"	"	"	"
"	19	24	.....	"	"	"	"
"	1	17	.....	Wm. & E. Brent.....	"	"	35
"	20	24	.....	"	"	"	"
"	2	19	....	William Brent.....	"	"	104
"	3	26	.....	John C. Brent..... ..	"	"	61
"	3	89	.....	"	1854	Sep., 1854.....	72
939	1	65	.....	Wm. & E. Brent..... ..	1854	Aug., 1854....	125
"	20	74	..	"	"	"	"
"	2	89	.....	William Brent	"	"	"
"	4	65	.....	William T. Baldwin.....	"	"	126
"	5	74	.....	"	"	"	"
"	6	97	.....	"	"	"	"
"	7	97	.....	"	"	"	"
"	9	97	.....	"	"	"	"
"	16	97	.....	"	"	"	"
"	17	97	....	"	"	"	"
"	19	97	.....	"	"	"	"
"	4	65	.....	"	1855	Sep., 1855.....	113
"	5	74	.....	"	"	"	"
"	6	97	.....	"	"	"	"
71							
939	7	97	.....	William T. Baldwin.....	1855	Sep., 1855.....	113
"	8	97	. .	"	"	"	"
"	9	97	.....	"	"	"	"

Sqr.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When p'd.	Fol.
939	16	$97	.....	Wm. T. Baldwin.....	1855	Sep., 1856.....	113
"	17	97	.....	"	"	"	"
"	19	97	.....	"	"	"	"
"	3	89	.....	John C. Brent.....	1855	Aug., 1855.....	65
"	3	89	.....	"	1856	Sep. 12, 1856...	71
"	2	89	.....	"	"	" ...	114
"	1	65	.....	"	"	" ...	119
"	20	74	.....	"	"	" ...	"
939	4	68	.....	William T. Baldwin.....	1856	Sep. 15, 1856...	120
"	5	74	.....	"	"	" ...	"
"	6	97	.....	"	"	" ...	"
"	7	97	.....	"	"	" ...	"
"	8	97	.....	"	"	" ...	"
"	9	97	.....	"	"	" ...	"
"	16	97	.....	"	"	" ...	"
"	17	97	.....	"	"	" ...	"
"	19	97	.....	"	"	" ...	"
"	4	68	.....	Christopher Ingle, trust. Wm. T. Baldwin.	1857	Sep. 9, 1857...	115
"	5	74	.....	"	"	" ...	"
"	6	97	.....	"	"	" ...	"
"	7	97	.....	"	"	" ...	"
"	8	97	.....	"	"	" ...	"
"	9	97	.....	"	"	" ...	"
"	16	97	.....	"	"	" ...	"
"	17	97	.....	"	"	" ...	"
"	19	97	.....	"	"	" ...	"
"	1	65	.....	Wm. & E. Brent	1857	" ...	113
"	20	74	.....	"	"	" ...	"
"	2	89	.....	William Brent.....	"	" ...	114
"	3	89	.....	John C. Brent.....	"	....	65
"	3	89	.....	"	1858	Aug. 27, 1858..	87
"	1	65	.....	Wm. & E. Brent *et al*.....	"	" ..	150
"	20	74	.....	"	"	" ...	"
"	2	89	.....	William Brent.....	"	" ...	"
939	4	68	.....	C. Ingle, trust.....	1858	Aug. 28, 1858..	143
"	5	74	.....	"	"	" ...	"
"	6	97	.....	"	"	" ...	"
"	7	97	.....	"	"	" ...	"
"	8	97	.....	"	"	" ...	"
"	9	97	.....	"	"	" ...	"
"	16	97	.....	"	"	" ...	"
"	17	97	.....	"	"	" ...	"
"	19	97	.....	"	"	" ...	"
"	4	130	.....	"	1859	Aug. 10, 1859..	135
"	5	147	.....	"	"	" ...	"
"	6	194	.....	"	"	" ...	"
"	7	194	.....	"	"	" ...	"
"	8	194	.....	"	"	" ...	"
"	9	194	.....	"	"	" ...	"
"	16	194	.....	"	"	" ...	"
"	17	194	.....	"	"	" ...	"
"	19	194	.....	"	"	" ...	"
"	1	130	.....	Wm. & E. Brent *et al*.....	"	Aug. 24, 1859..	139
72							
939	20	147	.....	Wm. & E. Brent *et al*.....	"	Aug. 24, 1859..	139
"	2	179	.....	Wm. Brent.....	"	" ...	"
"	3	179	.....	John C. Brent.....	.....	Aug. 30, 1859..	78
"	3	179	.....	"	1860	Aug. 28, 1860..	86
"	1	130	.....	Wm. & E. Brent *et al*.....	"	Aug. 26, 1860..	147

Sqr.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When pd.	Fol.
939	20	$147	....	Wm. & E. Brent *et al*.....	1860	Aug. 26, 1860..	147
"	2	179	.....	Wm. Brent.....	"	" ..	"
"	4	130	.....	C. Ingle, trust. W. T. B....	1860	Aug. 28, 1860..	147
"	5	147	.....	" ...	"	" ..	"
"	6	194	.....	"	"	" ..	"
"	7	194	.....	"	"	" ..	"
"	8	194	.....	" ...	"	" ..	"
"	9	194	.....	"	"	" ..	"
"	16	194	.....	" ...	"	" ..	"
"	17	194	.....	"	"	" ..	"
"	19	194	.....	"	"	" ..	"
"	4	130	.....	"	1861	Aug. 12, 1861..	204
"	5	147	.....	"	"	" ..	"
"	6	194	.....	"	"	" ..	"
"	7	194	.....	"	"	" ..	"
"	8	194	.....	"	"	" ..	"
"	9	194	.....	" ...	"	" ..	"
"	16	194	.....	"	"	" ..	"
"	17	194	.....	"	"	" ..	"
"	19	194	.....	" ...	"	" ..	"
"	1	130	.....	Wm. & E. Brent *et al*.	"	Aug. 27, 1861..	148
"	20	147	.....	"	"	" ..	"
"	2	179	.....	Wm. Brent.....	"	" ..	"
"	3	179	.....	John C. Brent.....	"	Sep. 27, 1861...	92
"	3	179	.....	"	1862	Sep. 22, 1862 ..	85
"	1	130	....	Wm. & W. Brent *et al*....	"	" ..	140
"	20	147	.....	"	"	"	"
"	2	179	.....	"	"	" ..	"
939	4	130	.....	C. Ingle, trust.....	1862	Aug. 27, 1862..	144
"	5	147	.....	"	"	" ..	"
"	6	194	.....	"	"	" ..	"
"	7	194	.....	"	"	" ..	"
"	8	194	.....	"	"	" ..	"
"	9	194	.....	"	"	" ..	"
"	16	194	.....	"	"	" ..	"
"	17	194	.....	"	"	" ..	"
"	19	194	.....	"	"	" ..	"
"	4	130	.....	"	1863	Sep. 15, 1863 ..	143
"	5	147	.....	"	"	" ..	"
"	6	194	.....	"	"	" ..	"
"	7	194	.....	"	"	" ..	"
"	8	194	.....	"	"	" ..	"
"	9	194	.....	"	"	" ..	"
"	16	194	.....	"	"	" ..	"
"	17	194	.....	"	"	" ..	"
"	19	194	.....	"	"	" ..	"
"	1	130	.....	Wm. E. Brent *et al*.....	"	Sep. 19, 1863 ..	142
"	20	147	.....	"	"	" ..	"
"	2	179	.....	Wm. Brent.....	"	" ..	"
"	3	179	.....	John C. Brent.....	"	" ..	87
"	3	357	.....	"	1864	Sep. 27, 1864...	73
"	1	347	.....	Wm. E. Brent *et al*	"	" ..	129
73							
939	20	294	.....	Wm. E. Brent *et al*..... ..	1864	Sep. 27, 1864...	129
"	2	357	....	William Brent.....	"	" ..	"
"	4	347	....	C. Ingle, trust.....	"	" ..	131
"	5	294	.....	"	"	" ..	"
"	6	387	....	"	"	" ..	"
"	7	388	.....	"	"	" ..	"
"	8	388	.....	"	"	" ..	"
"	9	388	.....	"	"	" ..	"

Sqr.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When p'd.	Fol.
939	16	$388	.....	C. Ingle, trust	1864	Sep. 27, 1864	131
"	17	388	.....	"	"	"	"
"	19	357	.....	"	"	"	"
"	4	347	.....	"	1865	Aug. 10, 1865	141
"	5	294	.....	"	"	"	"
"	6	387	.....	"	"	"	"
"	7	388	.....	"	"	"	"
"	8	388	.....	"	"	"	"
"	9	388	.....	C. Ingle, trust	1865	Aug. 10, 1865	141
"	16	388	.....	"	"	"	"
"	17	388	.....	"	"	"	"
"	19	357	.....	"	"	"	"
"	1	347	.....	Wm. & E. Brent *et al*	"	Aug., 1865	146
"	20	294	.....	"	"	"	"
"	2	357	.....	William Brent	"	"	145
"	2	357	.....	"	1866	Oct., 1866	154
939	1	347	.....	Wm. & E. Brent *et al*	1866	Oct., 1866	154
"	20	294	.....	"	"	"	"
"	3	357	.....	John C. Brent	"	"	97
"	4	347	.....	C. Ingle, trust	"	Sep. 11, 1866	148
"	5	294	.....	"	"	"	"
"	6	387	.....	"	"	"	"
"	7	388	.....	"	"	"	"
"	8	388	.....	"	"	"	"
"	9	388	.....	"	"	"	"
"	16	388	.....	"	"	"	"
"	17	388	.....	"	"	"	"
"	19	357	.....	"	"	"	"
"	4	347	.....	C. Ingle, trust	1867	Dec. 14, 1867	138
"	5	294	.....	"	"	"	"
"	6	387	.....	"	"	"	"
"	7	388	.....	"	"	"	"
"	8	388	.....	"	"	"	"
"	9	388	.....	"	"	"	"
"	16	388	.....	"	"	"	"
"	17	388	.....	"	"	"	"
"	19	357	.....	"	"	"	"
"	1	347	.....	Wm. & E. Brent *et al*	"	Nov. 5, 1867	151
"	20	294	.....	"	"	"	"
"	2	357	.....	William Brent	"	Nov., 1867	157
"	3	357	.....	John C. Brent	.....	.....	97
939	3	357	.....	John C. Brent	1868	Dec., 1868	101
"	2	357	.....	" trust	"	"	99
"	1	347	.....	William Brent	"	"	159
"	20	294	.....	"	"	"	"
"	4	347	.....	C. Ingle, trust	"	Dec. 11, 1868	172
"	5	294	.....	"	"	"	"
"	6	387	.....	"	"	"	"
74							
939	7	388	.....	C. Ingle, trust	1866	Dec. 11, 1868	172
"	8	388	.....	"	"	"	"
"	9	388	.....	"	"	"	"
"	16	388	.....	"	"	"	"
"	17	388	.....	"	"	"	"
"	19	357	.....	"	"	"	"
"	4	347	$100	"	1869	Jun. 13, 1870	174
"	5	392	225	"	"	"	"
"	6	517	100	"	"	"	"
"	7	517	.....	"	"	"	"
"	8	646	.....	"	"	"	"

Sqr.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When sold.	Fol.
939	9	$517	.....	C. Ingle, trust	1869	Jun- 13, 1870 ...	174
"	18	517	.....	"	"	" ...	"
"	17	517	.....	"	"	" ...	"
"	19	517	.....	"	"	" ...	"
"	1	434	.....	William Brent	"	Nov. 15, 1869 ...	168
"	20	392	$600	"	"	" ...	"
"	3	476	.....	John C. Brent	"	Jan. 24, 1870 ...	108
939	2	476	.....	John C. Brent, trust	1869	Nov. 16, 1869 ...	108
"	2	476	.....	"	1870	Nov. 4, 1870 ...	109
"	3	476	.....	John C. Brent	"	Dec. 7, 1870 ...	111
"	"	434	.....	William Brent	"	Nov. 4, 1870 ...	172
"	20	392	600	"	"	" ...	"
"	4	347	100	C. Ingle, trust	"	Oct. 28, 1870 ...	177
"	5	392	225	"	"	" ...	"
"	6	517	100	"	"	" ...	"
"	7	517	.....	"	"	" ...	"
"	8	646	.....	"	"	" ...	"
"	9	517		"	"	" ...	"
"	16	517	.....	"	"	" ...	"
"	17	517	.....	"	"	" ...	"
"	19	517	.....	"	"	" ...	"
"	4	347	100	"	1871,'2	M-r. 30, 1872 ...	188
"	5	392	225	"	"	" ...	"
"	6	517	100	"	"	" ...	"
"	7	517	.....	"	"	" ...	"
"	8	646	.....	"	"	" ...	"
"	9	517	.....	"	"	" ...	"
"	16	517	.....	"	"	" ...	"
"	17	517	.....	"	"	" ...	"
"	19	517	.....	"	"	" ...	"
"	1	434	.....	William Brent	1871,'2	Nv. 27, 1871 ...	176
"	20	392	600	"	"	" ...	"
"	3	476	.....	John C. Brent	"	" ...	115
939	2	476	.....	John C. Brent, trust.	1871,'2	Nv. 27, 1871 ...	112
"	1	434	.....	William Brent	1873	Sep. 28, 1872 ...	210
"	20	387	.....	"	"	" ...	"
"	3	476	700	John C. Brent	"	Jul- 18, 1873 ...	132
"	2	476	.....	John C. Brent, trust.	"	Sep. 28, 1873 ...	129
"	4	347	.....	C. Ingle, trust	"	M'y 31, 1873 ...	329
"	5	387	.....	"	"	" ...	"
"	6	517	.....	"	"	" ...	"
"	7	517	.....	"	"	" ...	"
"	8	517	250	"	"	" ...	"
"	9	517	50	"	"	" ...	"
"	16	517	.....	"	"	Jun- 22, 1873 ...	"
75							
939	17	517	.....	C. Ingle, trust	1873	Ap. 24, 1874 ...	329
"	19	517	.....	"	"	Cancelled ...	"
"	4	348	.....	Jos. R. Ashley	1874	Sep. 29, 1875 ...	20
"	5	389	.....	"	"	" ...	"
"	6	515	.....	"	"	" ...	"
"	7	515	100	"	"	" ...	"
"	8	515	250	"	"	" ...	"
"	9	515	.....	"	"	" ...	"
"	1	434	.....	William Brent	"	Sep. 15, 1873 ...	195
"	20	389	.....	"	"	" ...	"
"	3	477	600	John C. Brent	"	May 25, 1877 ...	125
"	2	477	.....	John C. Brent, trust	"	Sep. 15, 1873 ...	122
"	2	477	.....	"	1875	Aug. 29, 1874 ...	136
939	3	477	600	John C. Brent	1875	May 25, 1877 ...	139

Sqr.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When p'd.	Fol.
939	1	$434	.....	William Brent	1875	Aug. 29, 1874	213
"	20	389	.....	"	"	"	"
"	4	348	....	Jos. R. Ashley	"	Oct. 23, 1874	24
"	5	389	.....	"	"	"	"
"	6	515	.....	"	"	"	"
"	7	515	$100	"	"	"	"
"	8	515	250	"	"	"	"
"	9	515	.....	"	"	"	"
"	4	521	.....	"	1876	Oct. 26, 1875	26
"	5	387	.....	"	"	"	"
"	6	515	.....	"	"	"	"
"	7	515	100	"	"	"	"
"	8	515	250	"	"	"	"
"	9	515	.....	"	"	"	"
"	1	521	.....	William Brent	"	Oct. 29, 1875	222
"	20	483	.....	William Brent	"	Oct. 29, 1876	
"	3	715	600	John C. Brent	"	Jun- 5, 1876	146
"	3	715	.....	John C. Brent, trust	"	Jun- 6, 1876	143
"	3	715	600	"	1877	May 25, 1877	152
"	328	247	.....	C. D. Brent	"	Oct. 1, 1879	507
"	20	222	.....	"	"	"	"
"	27	247	.....	E. C. Brent	"	"	"
"	1	521	.....	William Brent	"	Dec. 7, 1876	227
"	4	521	.....	Jos. R. Ashley	"	Dec. 30, 1876	"
"	5	387	.....	"	"	"	"
"	6	515	.....	"	"	"	"
"	7	515	100	"	"	"	"
939	9	515	100	Jos. R. Ashley	1877	Dec. 30, 1876	227
"	20	483	.....	Mary V. Chilton	"	Oct. 1, 1879	507
"	20	483	.....	"	1878	Sep. 30, 1879	549
"	27	247	.....	E. C. Brent	"	Sep. 1, 1879	549
"	328	247	.....	C. D. Brent	"	"	"
"	20	222	.....	"	"	"	"
"	3	715	600	John C. Brent	"	Aug. 28, 1879	146
"	4	521	.....	Joseph R. Ashley	"	Nov. 7, 1877	26
"	5	387	.....	"	"	"	"
"	6	515	.....	"	"	"	"
"	7	515	.....	"	"	"	"
"	8	515	250	"	"	"	"
"	9	515	100	"	"	"	"
"	4	521	.....	"	1879	Nov. 4, 1878	30
"	5	387	.....	"	"	"	"
76							
939	6	515	.....	Joseph R. Ashley	1879	Nov. 4, 1878	30
"	7	515	.....	"	"	"	"
"	8	515	.....	"	"	"	"
"	9	515	100	"	"	"	"
"	328	206	.....	C. D. Brent	"	Sep. 1, 1879	84
"	20	185	.....	"	"	"	"
"	27	206	.....	E. C. Brent	"	"	100
"	3	596	600	John C. Brent	"	Aug. 28, 1879	161
"	3	596	600	"	1880	Nov. 28, 1879	172
"	1	521	.....	Margaret Murphy	"	Feb. 26, 1880	266
"	328	206	.....	C. D. L. Brent	"	Nov. 29, 1879	91
939	20	185	.....	C. D. Brent	1880	Nov. 29, 1879	91
"	27	206	.....	E. C. Brent	"	"	106
"	20	483	.....	Mary V. Chilton	"	Nov. 17, 1881	421
"	4	521	.....	Jos. R. Ashley	"	Nov. 1, 1879	32
"	5	387	.....	"	"	"	"
"	6	515	.....	"	"	"	"

Sqr.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When p'd.	Fol.
939	7	$515	.....	Jos. R. Ashley	1880	Nov. 1, 1879	32
"	8	515	.....	"	"	" "	"
"	9	515	$100	"	"	" "	"
"	4	521	.....	"	1881	Nov. 8, 1880	34
"	5	387	.....	"	"	" "	"
"	6	515	.....	"	"	" "	"
"	7	515	.....	"	"	" "	"
"	8	515	.....	"	"	" "	"
"	9	515	100	"	"	" "	"
"	1	521	.....	Margaret Murphy	"	Nov. 27, 1880	289
"	3	596	600	Rob't G. Campbell	"	Nov. 26, 1880	470
"	20	483	.....	Mary V. Chilton	"	Nov. 17, 1881	440
"	328	206	.....	C. D. Brent	1881	Nov. 23, 1880	99
"	29	185	.....	"	"	" "	"
"	27	206	.....	E. C. Brent	"	" "	116
"	4	521	.....	Jos. R. Ashley	1882	Nov. 30, 1881	35
"	5	387	.....	"	"	" "	"
"	6	515	.....	"	"	" "	"
"	7	515	.....	"	"	" "	"
"	8	515	.....	"	"	" "	"
939	9	515	100	Jos. R. Ashley	1882	Nov. 30, 1881	35
"	3	596	600	Rob't G. Campbell	"	Nov. 23, 1881	483
"	4	521	.....	Jos. R. Ashley	1883	Nov. 14, 1882	43
"	5	387	.....	"	"	" "	"
"	6	515	.....	"	"	" "	"
"	7	515	.....	"	"	" "	"
"	8	515	.....	"	"	" "	"
"	9	515	100	"	"	" "	"
"	3	596	.....	Jas. A. Ashley *et al*	"	" "	"
"	3	417	.....	"	1884	Nov. 23, 1883	51
"	4	304		Jos. R. Ashley	1884	" "	"
"	5	242	.....	"	"	" "	"
"	6	322	.....	"	"	" "	"
"	7	322	.....	"	"	" "	"
"	8	322	.....	"	"	" "	"
"	9	322	.....	"	"	" "	"
"	4	304	.....	"	1885	Nov. 25, 1884	36
"	5	242	.....	"	"	" "	"
"	6	322	.....	"	"	" "	"
77							
939	7	322	.....	Jos. R. Ashley	1885	Nov. 25, 1884	36
"	8	322	.....	"	"	" "	"
"	9	322	.....	"	"	" "	"
"	3	417	.....	Jas. A. Ashley *et al*	"	" "	"
"	3	417	.....	"	1886	Jul- 14, 1886	"
939	4	304	.....	Jos. R. Ashley	1886	Jul- 14, 1886	36
"	5	242	.....	"	"	" "	"
"	6	322	.....	"	"	" "	"
"	7	322	.....	"	"	" "	"
"	8	322	.....	"	"	" "	"
"	9	322	.....	"	"	" "	"
"	4	652	.....	"	1887	Oct. 22, 1887	"
"	5	532	.....	"	"	" "	"
"	6	773	.....	"	"	" "	"
"	7	773	.....	"	"	" "	"
"	8	773	100	"	"	" "	"
"	9	773	100	"	"	" "	"
"	3	596	.....	Jas. A. Ashley *et al*	"	" "	35
"	3	596	.....	"	1888	May 12, 1889	"
"	4	652	.....	Jos. R. Ashley	"	" "	"

Sec.	Lot.	Value lot.	Value impr.	To whom assessed.	Year.	When p'd.	Fol.
939	5	$592	.....	Jos. R. Ashley	1888	May 12, 1889...	35
"	6	773	.....	"	"	" " ...	"
"	7	773	.....	"	"	" " ..	"
"	8	773	$100	"	"	" " ...	"
"	9	773	100	"	"	" " ...	"
"	4	652	.....	"	1889	May 15, 1890 ..	33
"	5	592	.....	"	"	" " ..	"
"	6	773	.....	"	"	" " ...	"
939	7	773	.....	Jos. R. Ashley	1889	May 15, 1890 ...	33
"	8	773	100	"	"	" " ...	"
"	9	773	100	"	"	" " ...	"
"	3	596	.....	Jas. A. Ashley *et al*.....	"	" "	"
"	4	1,086	.....	Jos. R. Ashley.....	1890	1st ½, Nov. 22, 1889; 2nd half, May 29, 1890.	34
"	5	870	....	Jos. R. Ashley.....	1890	1st half, Nov. 22, 1889; 2nd half, May 22, 1890.	34
"	6	1,160	.....	"	"	" "	"
"	7	1,160	...	"	"	" "	"
"	8	1,160	100	"	"	" "	"
"	9	1,160	100	"	"	" "	"
"	3	1,191	.....	Jas. A. Ashley *et al*.....	"	" "	34
"	3	1,191	.....	"	1891	1st half, Feb'y 28, '91; 2nd half, Oct. 26, 1891.	"
"	4	1,086	100	Jos. R. Ashley	"	" "	"
"	5	870	....	"	"	" "	"
939	6	1,160	....	Jos. R. Ashley	1891	1st half, Feb. 28, 1891; 2nd half, Oct. 26, 1891.	34
"	7	1,160	.....	"	"	" "	"
"	8	1,160	100	"	"	" "	"
"	9	1,160	100	"	"	" "	"
78							
939	4	1,086	100	Jos. R. Ashley	1892	1st half, Jan. 29, 1892; 2nd half, May 31, '92.	36
"	5	870	.....	"	"	" "	"
"	6	1,160	.....	"	"	" "	"
"	7	1,160	....	"	"	" "	"
"	8	1,160	100	"	"	" "	"
"	9	1,160	100	"	"	" "	"
"	3	1,191	.....	Jas. A. Ashley *et al*...	"	" "	35

Recross-examination:

My uncle is a very old man; feeble; hard of hearing.

D. O'CALLAGHAN, a witness on behalf of the plaintiff, testified as follows:

I knew John Carroll Brent and his sister, Mary Virginia Brent. She is married, and her husband is Mr. Chilton. I saw William B. Chilton on the witness stand this morning. To the best of my knowledge, he is a son of that marriage—he is so regarded.

GOFF A. HALL, being recalled and further examined by plaintiff's counsel, testified as follows:

There is a tax ledger for each year from 1824 to the present time. Some of them weigh forty pounds, I should think. There are more ledgers than that. As you come down in recent years the number of lots increase, owing to the subdivisions, and there are eight books for 1897, and have been for several years. Since yesterday I prepared a statement showing all that those tax ledgers would show in regard to lots in square 939 from 1830 to the present time. There are books missing from the office. From 1824 it skipped to 1830.

Thereupon plaintiff's counsel offered the list in evidence. The defendant's counsel objected upon the ground that the paper is not the best evidence, and that it does not show by whom the payments were made; also as a general foundation objection that payment of taxes is not admissible in evidence as tending to show title by adverse possession. The court overruled the objection; to which ruling counsel for defendant excepted, and the exception was duly noted on the minutes of the court before the jury retired. Plaintiff's counsel thereupon read said list in evidence to the jury. It is in the words and figures following:

Witness resuming:

I have searched for but have not been able to find any original memoranda in field books from which these entries for improvements were transferred to the assessment books.

In 1873 there is an improvement of $700.00 on lot 3, in square 939.

79 To this testimony the defendant objected as not the best evidence; but the court overruled the objection; to which the defendant duly excepted.

At that time the lot was assessed in the name of John Carroll Brent; that continued to be assessed on lot 3 down to 1882. This house on lot 3 is assessed down to 1880 in the name of John C. Brent; in 1881 it appears in the name of Robert G. Campbell; in 1883 it comes down to James A. Ashley and others. In 1881 lot 2 was subdivided, Clementina B. Brent holding sublots 28 and 29 and Emily C. Brent sublot 27. I find in the tax ledger which I have here that in 1883 there is $600 assessed to Morris Downs on sublot 28. It appears in the book that sub 28 is a sublot of lot 2. In 1869 lot 4 is assessed in the name of Christopher Ingle for improvements for $100; lot 5 is assessed for improvement in that year for $225, and lot 6 for $100 in the name of Christopher Ingle, trustee. I have here the general assessment book for the five years, from 1829 to 1833, and in it I find that lot 15, square 939, is assessed for improvements $500. There is no assessment for any improvements on lot 12.

To each of the foregoing statements of these witnesses the defend-

ant objected; the court overruled the objections, and to each of these rulings the defendant then and there duly excepted.

The assessment book for 1832 shows $500 put down opposite lot 2, in square 940, and changed afterwards in pencil to lot 15, in square 939. The assessment book for 1833 shows $500 opposite lot 15, in square 939. The tax book for 1830 shows $200 improvement on lot 2, square 940, and no improvement opposite lot 15, in square 939.

Cross-examination:

In the tax book for 1834 I have under the name of Thomas Lowe, Prince George's county, Maryland, in trust for Mary Baldwin and children, $200 improvements set opposite to lot 2, in square 940, and no improvement opposite lot 15, in square 939. In the record for 1835 I find the entries as to this matter are the same as in 1834. There is in the margin under the head of remarks, opposite lot- 13, 14, and 15, "Martha Austin, Jane Lowe," indicating that those lots have been transferred to them.

JAMES A. ASHLEY, being recalled and further examined by plaintiff's counsel, testified as follows, subject to the defendant's objection and exception:

I have found among the papers of Joseph R. Ashley receipts for taxes paid by him after he made the Baldwin purchase.

(These receipts were submitted to defendant's counsel for examination.)

Since the death of Joseph R. Ashley I, for myself and my
80 two sisters and my two brothers, have paid the taxes on the lots named in the Baldwin deed. The heirs of Joseph R. Ashley are myself, my brother, Nehemiah B., the present plaintiff; George K., Sarah Eliza, and Mary A.

The witness here produced the original deed from Morris Downs and wife to himself and his brothers and sisters, conveying lot 3, in square 939.

Thereupon defendant's counsel admitted that Nicholas Callan, the notary public, is dead.

Witness resuming:

A few months after this deed was delivered to us the house, which was then on lot 3, was moved to a lot further off.

HENRY F. BEARDSLEY, being recalled and further examined by plaintiff's counsel, testified as follows:

Since I was last upon the stand I have examined these original certificates of division between the United States commissioners and the original proprietors and have compared them first with the registers of squares produced by Mr. Stewart and then with the record of squares in the surveyor's office. I have compared the endorsements upon those certificates as to the place of record with those two series of books. Mr. Stewart assisted me; he read over

the original plat to me and I copied it and we compared it there, and then I came to the surveyor's office and compared it with the surveyor's records.

Defendant's counsel objected to this testimony. Plaintiff's counsel stated that they offered to prove by this witness that each of the certificates of division in the office of the commissioner of public buildings and grounds in charge of the witness Stewart had an endorsement upon it substantially like that upon the certificate of division in this case as to square 939, showing where and when the plat was reported; that the witness with Mr. Stewart had compared the first six hundred of these certificates with the register of squares in Mr. Stewart's custody; that the witness had made the comparison with the surveyor's record of squares; that the surveyor's book agreed with the endorsement except in some unimportant details, and that the registers of squares in the office of the commissioners of public buildings and grounds did not agree with them, and counsel stated that they offered this for the purpose of showing that the four volumes in the surveyor's office entitled records of squares were the original records, and that the register of squares in the office of the commissioner of public buildings and grounds is not such original record.

To this evidence defendant's counsel objected on the ground that the same tended to prove nothing and was not a part of the case. After hearing full argument the court overruled the objection, and counsel for defendant entered an exception; which exception was entered upon the minutes of the court before the jury retired.

Witness resuming:

I compared 597 of these plats, all that are included in Books
81 1 and 2 in the surveyor's office. I found that with very few exceptions the folio book of the original plat refers to the folio and book in the surveyor's office and not to the record in Mr. Stewart's office. They correspond in the surveyor's office and do not correspond in the registry in the War Department. The exceptions which I find are as follows: Squares 181, 182, 195, 326, 337, 345, 367, 371, 373, 375 are stated in the endorsement on the plat in the War Department to be recorded in a certain book and certain folio. In each case the folio corresponds exactly, but the square is found in the surveyor's book in a different volume. Square 181 on the plat is said to have been recorded in Book 3; it is recorded in Book 1. Square 182 and square 195 the same. Square 326 on the plat is said to have been recorded in Book One and in the surveyor's office it is in Book 2. Square 345 on the plat is said to have been recorded in Book 1; in the surveyor's office it is in Book 2. Square 367 the same. Square 371 on the plat is stated to have been recorded in Book 1; in the surveyor's office it is in Book 2. Squares 373 and 375 on their respective plats are stated to have been recorded in Book 3, while in the surveyor's office they are recorded in Book 2.

In the case of squares 214 and 217 they have been transposed—these on the back of the original plat, June 15, 1797, recorded 214,

first made 217 and corrected—then 217, April 16, 1797, Book 1, folio 214. In other words, 217 was found on 214 and 214 was found on 217. On the certificate it is made correct.

In square 301 the book and folio in the surveyor's office corresponds with the certificate, but there is an error of date between the two records. The month is all right and the day of the month, but there is a discrepancy in the year.

These endorsements do not correspond at all with the registers in Mr. Stewart's custody as to volume. There is no folio given in those registers; the plats are simply put in there in numerical order. In the register's book there is nothing to show whether the squares were recorded at all. There is no Book No. 4 among the registers

Cross-examination:

The squares are recorded in the Stewart registers in their numerical order. The pages are not numbered at all. I find on each page the square number, but I do not find any number at the top of the page, but in the registers I think, perhaps, the squares run in regular numerical order. Mr. Stewart was present and assisted me in examination of the registers in his office. He did not go with me to the surveyor's office. I made the comparison at the surveyor's office and my brother-in-law assisted some. What I did was to go to Mr. Stewart's office and make certain memoranda, with his assistance, and then brought the memoranda down to the surveyor's office, and, with my brother-in-law, compared it.

82 WILLIAM G. HENDERSON, a witness called and examined on behalf of the plaintiff, testified as follows:

I am a member of the bar. I was a resident of the city of Washington in October, 1881. (Witness was shown the paper in evidence purporting to be a deed from Morris Downs and wife to James A. Ashley and others, dated October —, 1881, on which his name appears as an attesting witness.)

I witnessed this deed at that time; that is my signature as a witness to it. Morris Downs signed by his mark. The handwriting in his name was mine. My recollection is that there was some disability to his hand which prevented him from writing.

THOMAS P. CALLAN, a witness called and examined on behalf of the plaintiff, testified as follows

I knew M. P. Callan, who, on the 20th day of October, 1881, was a notary public. I am very familiar with his handwriting; he is dead.

(This witness was shown the deed last referred to.)

His signature there as an attesting witness — in his handwriting, and so is his signature to the acknowledgment.

Said deed was thereupon introduced in evidence by the plaintiff's counsel, and its introduction objected to by counsel for the defendant on the general ground of pencil marks hereinbefore set forth,

and an exception was reserved and entered upon the minutes of the court on the overruling of said objection before the jury retired.

Said deed is in the words and figures following:

Defendant's Testimony.

The plaintiff having closed his case, counsel for the defendant, in order to maintain the issue joined, on his part called as a witness JOHN H. LOCKE, who gave evidence tending to show that he now resides at the Hampton Soldiers' Home, and that he was 76 years old; was born in Maryland and came to live in Washington city in his infancy. He was well acquainted with William T. Baldwin; used to visit his house, and Baldwin's son Gabriel married his sister. Baldwin was living on East Capitol street between 9th and 10th, in a frame house near the corner, when he first knew him. He knew where the Lowes lived, but was not personally acquainted with them; used to pass the house frequently; visited Baldwin from boyhood to manhood. When he was a small boy he used often to go by the property, and there were very little improvements around there. The streets about square 939 were in a bad condition. The streets were all open; no places were fenced in. In that section there were cornfields here and there between B and East Capitol streets. An old man by the name of Hazel used to attend them.

When he remembered square 939 for the first time it
83 had no fencing around. The Lowe house had a paling fence; that is all he could remember seeing. There were cherry trees around the Smith house, which was some distance from B street, on the hill. There was an enclosure around the Smith house to keep the boys from the cherry trees. There was no other fence in the square at that time. He was quite a small boy then and passed the property frequently to manhood. He lived in Washington till the Mexican war broke out, then he went to the war, thinks in 1848. He returned and lived in the same neighborhood, on B street between 1st and 2nd. He was absent from the city at the war about 14 months. From the time he first knew the property to the time he went to the Mexican war there was no other change in the square. Up to the time he went to the war and when he first knew the square he does not recollect that there was a fence on the lower part of it. After the Mexican war was over he came immediately back to the city; lived on B street between 1st and 2nd. Mr. Baldwin was living on East Capitol street then. Used to visit the house after Baldwin's death, after he came back. Directly after he came back from the war he passed by square 939, going gunning, and could not recollect whether there was any fence along the B Street front then; does not recollect any other building in the square 939. At that time he went to work for the B. and O. railroad in Baltimore, and enlisted in the late war—about the middle part of it; returned to Washington after the war was over; did not visit the square after he returned, nor the Baldwins. The two sons, the daughters, old man, and the old lady were dead. I did not visit them.

On cross-examination witness stated that he was 76 years old; the Lowe house was on the square 939 ever since he knew it, which was from his early boyhood; the house was on B street between 9th and 10th, thinks near 9th street; did not remember who lived in it; the house was there after he came back from the Mexican war. The Smith house was up on the hill, about one-half a block from the Lowe house; knew Smith, who occupied the Smith house, well. The Smith house was on the square between 9th and 10, B and C; both the Lowe house and the Smith house were on that square. The small shanties were on the square before the Mexican war; thinks the Lowe house was also, but is not sure about the Smith house. The Lowe house was on the south side of B street between 9th and 10th streets. Witness did not remember a house on 10th street near the corner of C; did not see any corn growing on the south side of square on B between 9th and 10th streets; might have been and might not.

In order to further maintain the issue joined on his part, defendant called as a witness JOHN MIDDLETON, who gave evidence tending to show that he lived at present at No. 506 E street northwest and was fifty years old; that he was acquainted with Enon Bradley, who lived on 10th street between B and C northeast; he used to go frequently to the house between — years 1857 and 1860,
84 until he went to the war; he first visited in 1857 or '58; used to go there two or three times a week. He went in the army on May 11, 1861, when he was 14 years old; he enlisted in Washington in the Mechanics' Union Rifles, in the three months' service. When he first knew the Bradley house there was no enclosure around it; the back yard was fenced in. Square 939, when he first knew it, was all open; there was no fence around it, to witness' recollection. At that time there was only two houses on the square, the Bradley house and a small house just beyond it—a one and one-half story frame—which was enclosed in a fence and which had some fruit trees in the yard; said house was northeast of the Bradley house; the enclosure around the small frame ran on the north of it. At that time none of the streets were graded; it was like up hill and down—like commons. The house stood on the commons and had an enclosure; the enclosure ran as far south as the line of the house; there was no fencing at all between what is now the line of B street and the Bradley house—no fencing at all on the north side of B street. His knowledge of the square began in 1857 or 1858 and continued until 1860 or 1861; he staid in the army four years and came back to the city the third of July, 1865; he used to go out to the Bradley house in order to go to Sunday school at Waugh chapel, corner 3rd and A N. E. Enon Bradley was about his age; he was about twelve years old when he last saw him. Witness stated he went to the square frequently when a boy; he lived on A street near 4th, and in 1857 he lived on East Capitol street, but after the death of his father he went to live with his brother on A street near the corner of 4th and lived there until he enlisted.

On cross-examination witness stated that he was ten years old when he first became acquainted with Enon Bradley; he was ten or eleven years old when he first visited the house of Bradley; he continued to visit him till he went to the war in 1861, and there was no change in that square during that period. His recollection was that the Howard house was the last house, going out on the south side of B street; beyond that there was a lot fenced by a post-and-rail fence; that would be about the line of 11th street now; beyond that was "Scavengers' marsh." On the north side of B street there were only the two houses heretofore mentioned; the balance of the square was all open. Witness did not know of another house being alongside of the Bradley house; if there was, think — would have seen it; think there was no such house; that there were fruit trees—cherries, peaches, apples—around the story-and-a-half house on 10th street near C street; there was no house between the Bradley and C street; did not remember hearing the Bradley boy speak of his cousins, the Eakles.

On redirect examination witness stated that there was no fence or enclosure between the Bradley house and B street, neither house or fence.

In order to further maintain the issue joined on his part, defendant called as a witness JAMES E. HALLEY, who gave evidence
85 tending to show that he was 67 years of age and at present resided at 107 Maple avenue, Anacostia; that he was acquainted with the wife of Reed Bradley, who lived on 10th street between B and C; became acquainted with her in the spring of 1857, when she was living there. He rented a portion of her house and lived there a few months in the spring of 1857. At that time there were three buildings on 10th street—the old story-and-a-half house, which occupied about a quarter or half an acre, Mr. Eakle's house, who was a relative of Mrs. Bradley's, and Mr. Bradley's house, separated by a lot from the Eakle's. The Eakle house was south of the Bradley, between A and B streets. The three houses were on 10th street, and the only houses in the square in 1857. Around the old story-and-a-half house there was an enclosure which contained apple and cherry trees. The enclosure was small, and there was a space between the enclosure and the Bradley property. There was a small space of four or five feet between the Bradley house and the fence. The enclosure around the Bradley property extended about half way down the square; is not sure there was a division fence between the Bradley and Eakle's; the front fence enclosed the two properties. In 1857 the balance of the square south of the Eakle's house was not enclosed. After that period he did not see the property for several years. He moved away from the square in August, 1857, to Virginia; did not see the square again till about 1867. He returned to live in the District in 1861, at which time he lived at Fort Carroll, just beyond the Insane Asylum. He lived there till 1865. From there he moved to his farm, about one and one-half miles below that, and lived there till 1889, when he moved back to the District again.

On cross-examination witness stated that in 1857 he was employed a portion of the time in driving cattle and sheep in Virginia and Maryland. While living at the Bradley house he was not occupied much; might possibly have gone once or twice to Virginia and Maryland. While living there knew something of the Baldwin family and a man by the name of Bright. The country was sparcely settled, and not many people lived there; did not know what the Baldwins' occupation was. Witness thought there was a space between the Bradley and Eakle's houses, but did not know to whom it belonged. Square between 10th and 11, B and C, was occupied by a German by the name of Miller. Witness knew a man by the name of Howard who lived on the low ground there—he was a butcher—about two or three squares away. He lived southwest from the Bradley house. The story-and-a-half house was occupied then, witness did not remember by whom. Witness stated that they received their wood then in the back of the lots, and most of the property there was commons. His recollection was there was no fence south of the story-and-a-half house running from 9th to 10th streets.

On redirect examination witness stated they got their wood and coal in from the rear, but could not locate the particular roadway because at that time the streets were not defined and parties would use whatever roads were most convenient. The streets since
86 then have been graded down. At that time they were level. You could use any street you wanted to. There were some houses on 9th street, but you could not tell exactly where they were because the streets were not defined. If a lot was not enclosed, but it was more convenient to go across it, they were used that way. People would use the nearest way. There was nothing to prevent going across the lots on the south end of this square, 939; there was no fence and always in the same grade. The route used to bring coal and wood into the Bradley house was from 9th street; it could not be brought in from 10th street. Last time he saw the square was in April of this year. Where the row of brick houses now stands at that time the ground was a commons.

On recross-examination witness stated that the Bradley and Eakles had their lots fenced in; they were in about the middle of the square; could not remember if there was a gate or opening on the west line of the fence. He passed the square last May of his own accord; no one asked him to; he went there on business.

In order to further maintain the issu- joined on his part, defendant called as a witness SAMUEL T. CLARK, who gave evidence tending to show that he was 75 years old and at present lives on L street between 13th and 14th southeast, No. 1213; became acquainted with William T. Baldwin in 1841 or '2, when witness was between 16 and 18 years old. Witness stated that he lived then in the Smith house, right above Baldwin. It was an old frame house facing east. It was on 9th street, running back clean to 10th. It was enclosed and there were some big cherry trees in yards and that was enclosed. The house was a story-and-a-half house. That

square 939 was between 9th and 10th, B and C streets. Mr. Baldwin lived on B street. The Smith house was near the corner of C street, about 200 feet from the corner, facing 9th, on left-hand side of the road going to Bladensburg. At that time he knew the property and went there to live. The square was all clear, with no enclosure except the Smith house. The Smith house was enclosed. There were cherry trees in the back yard and one in front of the house in the yard. All were in the enclosure. The south line of the fence was with the line of the house. The fence ran from 9th to 10th street and on the north line to C street. The fence enclosed about 2 or 3 hundred feet to C street. He lived in the Smith house from 1842 to 1846 or 1847. Then he went to the Mexican war. When he came back he lived there again with his brother-in-law for several years. When he left there again he went to live in Mr. Baldwin's house and lived there several years. His brother-in-law was named Goulrich and is now dead. During the period he lived in the Smith house—between the years 1842 to 1847—there was no enclosure around the square, only it was ditched up. He helped to ditch it up. We did not know anything about streets at that time out there. There was only a ditch there near B street. The ditch was on 9th, 10th, and B streets. The ditches were from four to six feet deep and were made to keep hogs and
87 stock out. They ditched it up on 9th, 10th, and B streets clean up to Smith's fence. His brother-in-law was a clerk in the War Department. Witness then stated he was in the Mexican war about 14 or 15 months. He was discharged at Pittsburg and came from there to Washington, and then went to the house to live, which is variously known as the Lowe house, Smith house, Gypsey, Harrison house. His brother-in-law rented it from Lowe. No change had taken place in the square in regard to enclosure when he returned to live there, and lived there several years. After he left the Smith house he went to live with the Baldwins, at their house on B street, below this square, on the south side of B street. The Baldwin house — about one-third of the square from 10th street and right south of the Lowe house. Witness stated that between the time he left the Smith house, after his return from the Mexican war, and when he went to live in the Baldwin house, there was no change in regard to enclosure in the square and it was not enclosed at all. He lived in the Baldwin house a couple of years. At that time there was living in the Baldwin house members of the Baldwin family—one son and four daughters. The eldest girl was Julia, who afterwards married Tardella; next was Lizzie, then Mollie, who married Bowden. Julia was the only daughter grown at that time. When the late war broke out witness was living corner of Mass. Ave. and 11th street northeast. He had been living there some time when that occurred. While he was living at the Smith house the only changes in square 939 were the building of the Bradley and Eakles houses. He was well acquainted with Gabe Baldwin and the daughters, and lived with them on that account. Mr. Baldwin was a bricklayer at that time. He worked for Baldwin, attending to the garden, driving the cart, and manuring

the lots. Witness lived on Mass. Ave. and 11th street fifteen years; was living there when the war broke out and during the whole war, except three months; then he was in the army. He was acquainted with Morris Downs and remembered the Half-way house. Witness stated he built a house for Downs on B street, facing B, near the middle of the square, when he was working at Lincoln depot, Baker's barrack. He was a carpenter by trade and built the house nights and mornings. The house was on B street between 9th and 10th streets, nearer to 10th than 9th when first built. After he had the framework of the house up, it was found out that it was on the wrong lot, and they had to move the house about 75 feet. The frame was picked up bodily and carried to its location by a gang of men from Baker's barracks. The frame of the house was only up. The men were on the inside and outside of the structure and lifted it up and carried it. It took about fifteen minutes to move the house. When the house was moved he finished it; thinks moved twice since then. At that time the Half-way house had been torn down. There was no house between the Smith house and B street then. It took him about one month to finish the house after it was moved, and had about five or six men to help him at times. Downs then moved into it. He built the Downs house about the
88 middle of the war, at which time there were some colored people lived up on the square and had their shanties enclosed. There were four of the shanties, and each had a small part of the ground enclosed. At the time the Downs house was built the lower part of the square was not enclosed.

On cross-examination witness stated that he did not know how long he knew the Half-way house before it was torn down, but it was some years. When he first knew it a man by the name of West had some connection with it; also one by the name of Sprague. It was torn down about 1863 or '4. It was erected after 1861, and I guess it stood for two or three years, and was torn down in the middle of the war. Witness stated he remembered the Baldwins from 1840 to 1842 and the ditch from about the same time. He helped to dig the ditch as far back as about 1840, and remembers of working as far back as 1840. He helped Mrs. Baldwin and young Baldwin to dig it. They sometimes used the square for putting garden stuff in it. They had a kind of garden there, raised oats, corn, and pumpkins sometimes, and the ditch was to keep the cattle out. He only knew of one son of the Baldwins, and his name was Gabe. He helped the Baldwins clean the ditch out. Witness knew Mrs. Downs. She would sometimes come out to the house while he was building it. Downs was married at the time he built the house.

On redirect examination witness stated that at the time he was helping dig the ditch he was living with the Baldwins on the south side of B street near 10th. The ditch was right opposite Mr. Baldwin's house. He did not know if the ditch was in the street or on the lot. The streets were not graded then and were called roads. The ditch ran from 9th to 10th street, and ran up 9th and 10th streets clean up to the Smith fence. He lived at the Baldwin house

before the Mexican war. At the time he went to live with the Baldwins the ditch was not there; part of it was. I helped to dig it, and after he was there about two years he helped to dig it. He did not remember how long before the Mexican war it was.

On recross examination, when he first knew the square 939 it was partly used as a garden by the Baldwins, but was vacant for a great many years. He played handy there in the summer time; never remembers a time when there was not a ditch there to keep the cattle out of that square; don't remember anything about that; used partly as a garden and partly as an oat field as far back as 1840, when witness first knew it.

In order to further maintain the issue joined on his part, defendant called as witness RICHARD A. NEAL, who gave evidence tending to show that he was 53 years old, and now lived at 648 A street northeast. He was acquainted with William T. Baldwin in 1857, when Baldwin lived on the south side of B street between 9th and 10th. He worked for Baldwin beginning in 1857 for about 18 months. The war had not commenced when he left the Baldwins. There was no fence on square 939 opposite the Baldwins when he went to work there in 1857 and none was put there while he remained with them. He saw the square two or three times
89 a week after he left the Baldwins up to near the breaking out of the war. No change took place as to enclosure during that time on the south part of the square, except the Half-way house which was there then. He knew the property down to the beginning of the war. In 1859 he went into the navy and did not see the property till 1863; there were no changes then. After 1863, the next time he saw the property was in 1865. The Half-way house was not there then. Mr. Downs' house was there then. At the time he worked for the Baldwins remembers that the family consisted of Gabriel Baldwin, son, four daughters, Lizzie, Julia, Mollie, and Martha. Mr. Baldwin had but one son, Gabriel. At the time he worked for them, the streets were simply lanes and roads. The square where Mr. Baldwin lived was lower than square 939 and the property was drained by a ditch from B street to Mass. Ave.; it ran down. There was a small hill running up from B street. The grade of square 939 rose as you went to C street. The ditch on B street looked like a ravine, as if it really had never been dug.

On cross-examination witness stated that the ditch spoken of was on the south side of B street to Mass. —, and it ran down 9th street, being down hill. He drove a horse and cart for the Baldwins in 1857, hauling dirt on contract. Baldwin worked for a man named Brown, grading street, and, as he owned a horse, he (witness) drove it for him. The team was stabled on Baldwin's place, corner B and 10th streets. He knew the Baldwins from boyhood. The Baldwins lived on 10th and East Capitol streets once. From 1857 to '59 they lived on B street and 10th street. They did not live on East Capitol prior to 1857.

Counsel for the defendant objected to the witness being asked if the Baldwins cultivated any ground, "because it was not cross-examination and immaterial, and also because, on direct examination, the witness was asked about square 940 and not 939, and also because the testimony sought to be elicited might be misleading." The court overruled the objection. Counsel for the defendant thereupon entered an exception, which was duly noted upon the minutes of the court before the jury retired.

Witness thereupon stated that the Baldwins cultivated some lots—gardens—for themselves. They had two or three gardens; one at their home, 10th and B, and another between 11th and 12th streets on B street, between B and C, 11th and 12th streets. A third garden was on East Capitol street, where they used to live. Square 939 was without fencing, an open commons; and witness thought the Downs house was on square 939 in 1857, 1858, and 1859, and that there was no other house in that square to witness' recollection.

On redirect examination witness stated that he knew of the Gypsey house, which was on the west side of 9th street between B and C northeast; the house faced east and he remembered it from boyhood. He remembered that Captain Goulrich lived there about forty years ago; also knew Mr. Samuel Clark, who lived on
90 Mass. Ave. near 8th street; did not know Mr. Clark when the witness lived with the Baldwins; saw him, but was not acquainted with him.

On recross-examination witness stated that he did not think he was working for the Baldwins when Captain Goulrich lived at the Lowe house. It was probably two years before he went to work for the Baldwins. Witness stated he was born in 1844.

In order to further maintain the issue joined on his part, the defendant called as a witness JOHN F. DONOHOE, who gave evidence tending to show that he was 58 years old and was born in Albany, New York, and came to Washington December 12, 1856, at which time he lived at 4th and A streets northeast. He knew square 939 from 1857 to 1858, at which time there was no fence on the square except on the upper part near 10th. There were three dwellings on the upper part near 10th street; they were near the corner of C. The rear part of the lot in which the houses were had a fence around it, which ran as far south as the houses. Was acquainted with a horse-trader by the name of Harrison, who lived in the upper house near C street. He had a large stable in rear of the building and lived there about 1867 and 1868. The stable is there now. A man by the name of Fowler lived in the next house. Mrs. Eakle lived in the next house. Saw the square three or four times a week or month after he became acquainted with it; knew Mrs. Baldwin. The south end of the square never had an enclosure around it until one was erected five or six years ago. Witness knew of the Downs house on B street, both the Half-way house and the present Downs house. The Half-way house was put there be-

tween 1862 and 1865. The Downs house was built previous to 29 or 30 years ago. There were some frame houses on the 9th Street side of the square. He first noticed them during the war. They were about two hundred or three hundred feet from B street. Colored people built them. They were one or two rooms, frame. They are not there now.

On cross-examination witness stated that there were very few squares fenced at the time he first knew this square; that there was nothing prior to the war that fixed his attention particularly to this square one way or the other, but it was directly opposite Mrs. Howard's house; there was no fence there. Square 939 was not fenced then. He has known Mrs. Howard for thirty-seven years. There were three or four houses in the square when he first knew it, and they are there yet. The Half-way house had no fence around it on the B Street front. It may have had; can't be positive. Did not remember Downs' house having a fence in front of it. There is a fence in the rear of said house. Can't say whether there was one in front or not or whether there is one there now or not. In 1869 there was no fence along the B Street front between 9th and 10th streets. There might have been one up as far as the middle of the square. The colored people had no fences in front of their houses. The most southernly cabin was 200 or 300 feet from B street. He had not noticed the cabins there for twenty years; is not positive about it.

91 In order to further maintain the issue joined on his part, defendant called as a witness HENRY E. MARKS, who gave evidence tending to show that he was 61 years old and a member of the police force. He came to live in Washington in 1837 and lived there in the southeast part. He went on the force February 1, 1867; his beat then was out east on the commons; north, as far as Maryland avenue; east, as far as the Boundary or branch; south, to the navy yard and branch. He knew of square 939. His recollection commenced in 1867. At that time there were but five houses on the square—one on B street, called the Half-way house, fronting south; one near the northeast corner, called the Gypsey house; three colored shanties on 9th Street side, fronting west. Could not recollect the houses on the 10th Street side; remembers a frame house on 10th street; did not remember when the south end of the square was fenced at all; did not remember any fencing on south end of square except the Half-way house. He was on the beat one year and during that time does not remember of any change in the square. In 1867 Mrs. Baldwin was living corner of 10th and East Capitol streets.

On cross-examination witness stated that he thought the fence in front of the Half-way house ran pretty far down toward 10th street, and had a garden on the east side of it.

In order to further maintain the issues joined in this cause, the defendant called as witness THOMAS A. SMITH, who gave evidence tending to show that he was 47 years old and came to Washington

in 1861. He first lived in South Washington, and in 1863 he moved in the rear of Mrs. Eakle's place, which was on 10th street between B and C northeast. He rented of Mrs. Eakles. He got in and out of the house from the rear and was accustomed to go all through the open fields. He lived there from 1863 to 1866.

Counsel for the plaintiff thereupon stated that they conceded that the fence they claimed to have been around this square disappeared in 1862 or the early part of 1863.

Witness thereupon stated that there was some shanties on the 9th Street side of the square, about the upper part of it, in 1863, and the Half-way house was on B street. A Mr. Spriggs, he thought, ran it in 1863. Witness knew Morris Downs, who took charge of the saloon after Spriggs left. He moved from Mrs. Eakle's place to one of the shanties, which his stepfather, by name of Jackson, leased of Mrs. Baldwin. From there he moved to 8th and Mass. avenue; from there, when he got married, he moved to a place on 8th street between C and D northeast, and lived there till he bought a place on northeast corner of 9th and C streets N. E. in 1871, and lived there till 1895. Witness remembered that the Half-way house was moved from where it was first built a little further up towards 10th street, and was afterwards rebuilt. The only houses on 9th street, in square 939, that were not there when he first knew the property was a row of five brick houses, erected about four years ago.

92 On cross-examination witness stated he moved to the square 939 in August, 1863. After he moved out of the Eakle house, in 1866, as Mrs. Tolson moved in it, he lived with his stepfather three years. When he first knew the Half-way house it stood on B street, half way between 9th and 10th, nearer the corner of 9th *and* 10th, thirty feet or more from the corner of 9th. Witness was positive the Half-way house was moved from there eastward; did not remember that it was torn down and a new house built; only remember the house being moved once; did not remember a man by the name of Finney in connection with the Half-way house. The Half-way house was a one-story structure, built out of old material and whitewashed. The house was there when they moved to square. When he first saw it, it looked like an old structure that had been there for some time.

In order to further maintain the issues joined in this cause, the defendant called as a witness SARAH A. LEE, who gave evidence tending to show that she was thirty-eight years old and her father's name was Dennis Harrison. She came to Washington in 1863 and lived with her father, on South B street between 12th and 13th streets. From there they moved to 12th street southeast, about one square below Philadelphia row, and lived there for a year. She next moved to 9th street between B and C northeast, in 1865, to a house her father had built there and lived there till 1885. The south part of the square 939 had no fence there at that time, in 1865. Mr. Downs had a house on the B Street side and lived there; remembers it only as a dwelling-house; it had no particular name

that she knew of. Witness' occupation was that of a school teacher until 1890; taught school for seven or eight years. She knew Anthony Addison, who lived on 9th street, the third door from their house; he was a laborer; did not remember of his having a cow. Her father moved away before Addison. Her brother lived in the house after her father left, and she visited it occasionally. No other structure other than the Downs house was erected on the B Street side of the square. Witness knew a man by the name of Nick Jones, who lived on the square in a one-story frame house below there. He lived there about six or seven years. Jones' house was nearer to their house than to the corner of 9th street and B. When she first knew the square there were three houses on 10th street—Mrs. Eakle's, Mrs. Bradley's, and the Gypsey house. Mrs. Bradley and Mrs. Eakle got their coal and wood through their back gates. The carts would come right up from 9th street right over the ground up to the back gates. There was a wagonway between her father's back gate and the Eakles and Bradleys. Wagons with coal and wood would often go over it. The use of the road commenced after they moved there, and was in use when they left the square in 1885. The road was about five feet south of their house, and the new row of brick houses on 9th street are a great way below that. Their house was located about the center of the square; on 9th street between B and C streets.

93 On cross-examination witness stated that Morris Downs lived all the time in the house on B street—ever since she could remember; knew Mrs. Downs, but did — remember when they were married. The house, from the time she remembered it, stood where it is now. She saw the house the day she testified. Addison had no cows while they lived there. Her father was the only one who had cows there. He had them about eight or ten years before he died, in 1889. Witness did not remember of a saloon or a drinking place or store being on the square. The Downs house was quite small; since then it has been improved.

In redirect examination witness stated that she had known Mrs. Downs from 1865 to 1885. When she first saw Mrs. Downs she was at her house on B street. She had been living there a long time then.

In order to further maintain the issues joined in this cause, the defendant called as a witness CHRISTIAN MAISAK, who gave evidence tending to show that he was 64 years old, and in 1861 came to live in Washington on 13th street between B and C northeast; that he lived at present on North Carolina avenue between 13 and 14th northeast; came to this city on October 11th, 1861. He was born in 1833; knew square 939 and passed by there most every day since he came to the city; became acquainted with the square in October, 1861. He was quartermaster sergeant of a battery and went past the square every day to draw forage or rations. He was encamped down at Isherwood springs and had to get the forage on G street and on 7th Street wharf. He would go on horseback over the commons for the forage, &c. His recollection of the square was

distinct, because a friend of his, by name of Engle, from the old country kept a restaurant on the opposite side of B street between 9th and 10th streets, and he was accustomed to go there. In 1861 the lower part of the square 939 had no fence on it. In the upper part of the square there was an old frame house with a pitched roof which in later years was known as the Gypsey house. A man by name of Helson had a sale and livery stable there. On the upper part of the square there were some batteries from New York. They were on the west one-half of the square, near 9th street, in the latter part of 1861, 1862, and 1863. The batteries located there were B batteries from New York and Vermont. Witness' term of enlistment expired on February 6th, 1862, and he was discharged. On June 9th, 1863, he re-enlisted in the First D. C. cavalry and left the city shortly afterwards and went to the front. On June 9th Tom Finney moved into witness' house with witness' family. In the latter part of 1863 Finney and one Sprague built a shanty on the southern part of B street, in said square, about 200 feet from 10th street. Finney and Downs were brothers-in-law. Downs bought out Finney when the Lincoln hospital broke up. He then built a two-story house, but he got the house on the wrong lot and in the first part of the '80's had to move it east 20 or 25 feet. Mr. Collo-
more moved the house. Witness stated he saw the square
94 regularly from 1861 down to the time he went to the front,
between 1863 and 1864. During the time the square was under his observation the only enclosures on the south part was what Morris Downs' house occupies today, and the southeast corner, which was enclosed by a man named Murphy. In 1861 there were three houses on 10th street—the Gypsey house, the Bradley house, and the Eakle house. The Bradley and Eakle houses had a short enclosure—not over 100 feet. There were a lot of big cherry trees on the lot covered by the Gypsey house. He stated further that he knew the lower part of square 939 was not enclosed, because you could go anywhere on it. He often went cata-corne-d from the camp across there. There was just a road through. From February, 1862, to June 9th, 1893, he followed the butchering business and drove hogs cata-cornered through the square to 12th and D streets N. E., to the slaughter-house. Witness was well acquainted with Downs. The batteries were on and off the square. They were all ordered over to Munson hill. He knew Dennis Harrison, who lived upon the hill part of the square. The square started towards 9th and 10th. The heaviest grade was on 10th. Harrison had a cow stable not far from the back part of Morris Downs' present fence. On the 9th Street front of the square, near C street, there were one or two shanties.

On — examination witness stated there were both New York and Vermont batteries on the square at the same time before the review over at Munson's hill, being in the latter part of 1861 and the first part of 1862. General McClellan was in command here in the latter part of 1861. Finney went away from here in 1866, when he sold out his interest in the Half-way house to Morris Downs. Downs afterwards remodeled the house in the '70's and went in

there right away with his wife. The house was moved in the '80's; it stood a long time on the wrong lot. The family was living in it when it was moved. Before being moved it was a saloon; it stood about 25 feet west of its present location. Witness stated he did not notice when the colored shanties were erected, because they did not face on B street, his way of traveling; they were back to C street. There were no houses there up to the spring of 1863; knew the property from the 12th or 13th of October, 1861, when he found out that Engle kept the restaurant, at which time there was no post-and-rail fence on the square. The square had sod on it. There was no fence around Downs' house till it was moved in the '80's. After he moved he had the house fenced in about forty foot front. The fence did not run near the corner of 10th street; no more than half way to 9th street. He only remembered of the house being moved once. According to his recollection, the house only stood in two places, where the Half-way house stood and the present location.

In order to further maintain the issue joined in this cause, the defendant called as a witness COLUMBUS SAMPSON, who gave evidence tending to show that he was at present living at 1430 F street N. E. He was fifty-four years old and was born in Washington. The first place he remembers living was on 2nd street be-
95 tween A and B N. E., in a house belonging to Horatio Merriman. He knew Mrs. Baldwin, and had seen William Tyler Baldwin working in the garden of his house on B street, between Mass. avenue and B street. The house stood about midway of the square, nearer to 9th than to 10th street. He was on the square bounded by B and Mass. avenue, 9th and 10th streets. It was either in the year 1854 or 1855 that he saw him. Witness was ten years old then and was going over to the Eastern branch. Witness has lived in Washington city all the time except when he entered the army in 1861 and came back in August, 1864. He went away again in March, 1865, and came back in March, 1866, and since that time he has been living here. From 1855 to 1861 he used to go out to the Baldwin property often, and used to pick berries for Mrs. Baldwin before she built the house on 10th and East Capitol streets. Witness remembered the square bounded by B and C, 9th and 10th streets N. E., and stated that there was no enclosure on the south part of it when he first knew of it. The first building put there was a one-story shanty, which was enclosed by the man who owned the shanty, called the Half-way house. It was put up either in 1861 or 1862; knew Mr. Morris Downs, who purchased the Half-way house and remodelled it into a two-story house. In the upper part of the square there was a house on 10th street with a lot of cherry trees around it. After the war it was called the Gypsey house. It had a fence just around the house. Downs remodelled the Half-way house about 1865 or 1866. He was employed to pick cherries by Mrs. Baldwin off her place, which ran from Mass. avenue to East Capitol street, and from 10th to 11th streets. After he knew the square for a year or too there was a big house built on

10th street and it was fenced in. When he returned to the city in 1865 he was at the Half-way house, a one-story shanty in which there was a bar-room. The next time he visited the square was in 1867, and the Half-way house was being remodelled by a man named Clark. Since the year 1868 he has seen the square nearly every day. Between th years 1868 and 1889 the changes in the square consisted of some shanties being built on 9th street, nearer C street than B. The square was higher at the upper part and fell towards B street.

On cross-examination witness stated that he could not say exactly what year the Half-way house was built, between the years 1861 to 1864, because he was in the army then. He entered the army in August, 1861, and came back from it in August, 1864. Witness did not remember whether he drank whiskey there in 1862, 1863, or 1864. The house stood on B street, about one-third the square up from 10th. As the street was not cut through then, you could not tell if the house stood on the corner or not. He did not think the streets were open in 1869. In that year 9th street was opened by this square, and the house was not on the corner then. The building was remodelled and then moved. In the year 1864 there were two houses in the square, the one called the Gypsey house and the big one on 10th street and the Half-way house. In 1855
96 there was one house in the square, and about that time the big house on 10th street was started. He was eight or nine years old when he first knew the square; he was born in 1843. The colored cabins on 9th street were put up there during the war or after the war. After he came out of the war he saw two or three shanties there. They were torn down five or six years ago. He never saw a post-and-rail fence around the southern end of the square.

In order to further maintain the issues joined in this cause, the defendant called as a witness ANDREW W. COLLOMORE, who gave evidence tending to show that he was 76 years old and is acquainted with Morris Downs; that in 1882 or 1883 he moved his house eastward about 25 feet. He estimated the house as fifteen or eighteen feet wide. The family remained in the house while it was being moved.

On cross-examination the witness stated that he had no way of fixing the distance the house was moved of a certainty, but knows he moved it from one lot to another; remembered a telegraph wire being on the house, and that he broke it; did not remember a telegraph pole being put up there.

On redirect examination the witness stated that he could not state positively that he moved the house a greater distance than the width of the house.

On recross-examination witness stated that it took him two or three days to move the house, and when he moved the house he had a permit from the District authorities to do so.

In order to further maintain the issues joined in this cause, the defendant called as a witness WASHINGTON WRIGHT, who gave evidence tending to show that he was 46 years and was born on 4½ street in 1851, and when he was nine years old they moved to North A street between 7th and 8th streets. When he was a small boy he became acquainted with a family of William Tyler Baldwin, who were then living on 10th and East Capitol streets. Witness stated they became acquainted with square 939 when he was nine years old—used to play upon it then—and at that time there was no fence on the B Street or southern part of the square. Witness stated that Morris Downs lived on 10th street N. E. He moved away from North A street about nine years ago. Since the time he knew square 939 there was no enclosure on the southern part of it.

On cross-examination witness stated that he never knew of any houses on B street between 9th and 10th streets. He began to play on the square when he was nine years old, and played there during the war and long after it. There were no houses on the B Street front of the square during the war. On the far end of the square there were three houses. Witness did not know who lived in the houses. Said houses were on the 10th Street side of the square. There were only three houses on the square when the war closed. Witness first knew Downs when he was 17 or 18 years old, and said
97 Downs was living then on 10th street between B and C streets N. E., near C street. There was no store in the square that he could remember. The Baldwin family he referred to was Gabriel Baldwin's. They lived on 10th and East Capitol streets, on the corner. Said Baldwin *was* not living now; he died about three years ago, in the country. Witness did not remember Gabriel Baldwin's father's name, but had heard of Tyler Baldwin. He could not remember when he had last seen the Downs house.

On redirect examination witness stated that he had passed the Downs house lots of times.

In order to further maintain the issues joined in this cause, the defendant called as a witness ROBERT COLLINS, who gave evidence tending to show that he was 60 years, and when he first came to Washington, lived on East Capitol street between 10th and 11th streets, on square 967, with his mother, which was the year 1859. He was about 22 years old then; remembers square 939 since 1859. He thought there was no fence around the southern end of the square, but could not positively swear to the fact. There was no building then on the southern end of it. There was one old one near the corner of 10th and B streets, and it was fenced in somewhere about 100 feet from the corner of C street. It was enclosed part in rear, but the enclosure did not go across the square. After 1851 there was a house erected by Downs on the B Street side of the square. I saw the square every day between 1859 and 1868. I never saw any fencing put up on the southern end of the square between those years, and could not remember when the Downs house was put up.

On cross-examination witness stated that he could state positively

he saw the square within one year from the time he moved upon the street because he passed by it each day. He remembered walking over it in the evenings with his mother. There was nothing special to fix the square in his mind. The house on 10th street was afterwards called the Gypsey house. There were no other houses on 10th street that he could remember; does not remember seeing the Downs house until two years after 1859. In 1868 the only houses he remembers in the square were Mrs. Bradley's, the Gypsey, and the Downs house; could only remember the Gypsey and the Bradley house fronting on 10th street in 1868; thought the Bradley house stood alone. There were no houses on the 9th Street side, facing west, in 1868. The Half-way house stood on the B Street side, facing south, about the centre between 9th and 10th streets. It was a small frame house that did not amount to much; have seen the house recently, and it stood in about the same place. The house had been improved.

In order to further maintain the issues joined in this cause, the defendant called as a witness WALTER T. BROOKS, who gave evidence tending to show that he was a Baptist gospel minister and came to Washington in 1862 to live in Georgetown. He then went to the army, and on his return lived on L street between 16th and 17th streets N. W. with his mother and sister. At that time
98 he was a boy. In July, 1863, he moved to 1st street between C and D N. E., in square 938. He was born *in* July 28th, 1847. Witness stated he knew and remembered square 939 from the year 1864, at which time there was a house on the south side of the square on B street, about midway between 9th and 10th streets, known as the Half-way house. It was then owned by Finney and a man named Sprague. At that time there was no other house in enclosure on the B Street side of the square. In 1864 he lived at 307 9th street N. E., and is living there now. There were a few houses on the 9th Street side of the square, the first one about 200 feet from the corner of B street, occupied by a man named Nick Jones. Above Jones lived a man by the name of White. There were four or five families living in the houses there; he could not remember all the names. The houses were not there in 1864; were put there further on; some of them might have been, but Jones' house was later on. The Jones house remained there for about five or six years. Jones had the house removed himself.

On cross-examination witness stated that there was a kind of a fence made of barrel staves and cracker boxes. Witness did not remember Jones having a chicken-house down towards B street. He did not measure the distance of Jones' house from B street. He would not swear the house was exactly 200 feet from the corner of B, but thought it was more than 100 feet. The last time he saw the Half-way house was the other day. It had been moved about 25 feet east from the place it was.

On redirect examination witness stated that the Nick Jones house was much nearer the Harrison house than to B street. The small frame houses were all in a cluster together.

In order to further maintain the issues joined in the cause, the defendant called as a witness WILLIAM B. COPPERSMITH, who gave evidence tending to show that he knew square 939, and the first time he crossed the square was April, 1866, the day he moved his shop from the first ward. He went to Capitol Hill to live, on East Capitol street between 2nd and 3rd; then he moved to the square where the Library stands. In 1866 he was employed at the Baker barracks. At that time square 939, on the B Street front, there was a small shanty, used as a sutler's shop, called the Half-way house, used as an eating or oyster house. The building was about midway between 9th and 10th streets.

On cross-examination the witness stated when he saw the square five years ago there was only one house on the B Street side, which stood close by the place where the Half-way house used to stand, and that there were no streets open there in 1866.

In order to further maintain the issues joined in this cause, the defendant called as a witness JOHN B. BRADY, who gave evidence tending to show that he is the inspector of buildings in the District of Columbia. Witness on being handed a paper to examine stated it was an application to move a frame building eighteen feet;
99 that the signature to the endorsement on the back was that of Thomas *T.* Entwistle, late inspector of buildings. On March 11th, 1882, Mr. Entwistle was the inspector. The signature to the lower endorsement was the signature of William Tyndall, in said Tyndall's handwriting.

Counsel for the defendant then offered the paper in evidence, with all the endorsements on it. Witness stated to the court it was an original paper, just taken from the files of the office, and that the initials P. J. L. were in the handwriting of Peter J. Lauriston, who was permit clerk at the time the application was filed, and that Mr. Entwistle was dead.

Counsel then read to the jury what was written on the back of the paper, which is as follows, to wit:

"To the honorable Commissioners, District of Columbia.

GENTLEMEN: The within application is for the removal of a wooden building on B street between 9th and 10th streets N. E. to the lot adjoining on the east, and as it does not interfere when relocated with other improvements, I see no objection to granting the permit.

Very respectfully, THOMAS B. ENTWISTLE,
Inspector of Buildings."

What was read to the jury was written on the back of application for a permit. Below that was the order:

Respectfully returned to the inspector of buildings, D. C. Issue permit. By order of—

WILLIAM TYNDALL, *Secretary.*

March 11, 1882.

The court permitted counsel for defendant to read everything in the application to the jury except the signature of Morris Downs, as to which the court sustained an objection, as interposed by plaintiff's counsel, that it was not sufficiently authenticated, as it purported to be by his mark, attested by a witness who was not called.

Counsel for the defendant thereupon reserved an exception to the court entering that the signature was not sufficiently verified, and the same was duly noted upon the minutes of the court, before the jury retired. Counsel for the defendant then read said paper for the jury—application for the permit for repairs, alterations, &c.:

"WASHINGTON, D. C., *March* 5, 1882.

To the inspector of buildings:

The undersigned applies for a permit to remove the following-described building:

Description of present building: ——.
Where located: Between 9th and 10th N. E.
No. of building- to be altered: One.
Name of owner: Morris Downs.
What is cost of proposed improvements? $100.
To remove frame house 18 feet east."

100 Counsel for defendant then offered in evidence so much of the paper as had been admitted and reserved an exception to the exclusion of what purported to be the signature of Morris Downs by mark.

On examination witness stated he had been connected with the office of the building inspector since July 1, 1882. He had no personal knowledge of the transaction nor of the work in question at all.

In order to further maintain the issues joined in this cause, the defendant called as a witness EDWARD V. HUGHES, who gave evidence tending to show that he resided now at the corner of 8th and B streets N. E. and had lived there for the last 14 years; that he had carried on business next door for the last 25 years. He first moved to Capitol Hill the latter part of 1865. He was in the army for three years and came out in 1864; came back to Washington September 1, 1864, and went to work for the Government September 9th, 1864, in the first ward, and was transferred the latter part of 1865 to Lincoln barracks. He was in the blacksmith department, stationed at Lincoln hospital, which was between 14th and 16th streets and B and East Capitol streets N. E. Square 939 came under his observation when he used to stop at the Half-way house. The said house was there when he first knew the square. It was situated about 80 or 90 feet from the corner of 9th and B streets east. At that time there were no other structures on the south part of the square. Sprague and Tom Finney had charge of the Half-way house at that time. He knew Morris Downs, and that he was

brother-in-law of Finney. Downs appeared later on, not many years afterwards. Witness remained in that neighborhood in the employ of the Government until he was transferred back to 19th and M streets to attend lectures that were given by Proffessor Dunbar.

He was detailed by the War Department with the veterinary surgeons. While attending the lectures he lived on 9th between B and C streets. From 1868 to about 1869, he saw the square 939 two or three times a week in going to the Half-way house. After 1869 he was transferred to Baker's barracks, and remained there a couple of years and then was transferred again. He was the last of the seven hundred blacksmiths to stop work for the Government in 1870 or 1871. He saw the southern part of the square between the years 1866 and 1869 about three or four times a week; no change in the matter of fencing took place in that time. About fourteen or fifteen years ago Downs moved his house about twenty or twenty-four feet. He saw it moved. It was moved on blocks, and the family remained in it. He, witness, was in the wood and coal business the next square below when the house was moved. When he first became acquainted with the square 939 Mrs. Eakle and Mrs. Bradley lived on the 10th Street front of the square, and the two houses joined each other; did not remember if there was a space between the two. Mrs. Eakle's house was south of Mrs. Bradley's. He sold wood and coal to both of them, which
101 was carried up the back way. The square rises towards 10th street; he would start a cart a couple of hundred feet above B street on 9th and drive over to the sheds. There were no pavements, and they could drive right across the ground. The driveway was above the row of brick houses on 9th street, and you could see where the roadway was now, from the depression in the ground. It was south near Dennis Harrison's house. Dennis Harrison worked for witness ten or twelve years. There were three or four structures on the 9th Street part of the square, and were occupied by Dennis Harrison, Addison, Tom Johnson, and William Jackson. There was a one-story shed occupied by Jones. The Jones house was a one-story affair of posts, and boarded around, and was the first to leave. Witness stated he used the corner of 9th and B streets for years, piling sand and stone there, and no one ever objected to its being used.

On cross-examination witness was asked whom he understood to be the owner of the ground on which he deposited sand.

Counsel for the defendant objected to the question on the ground that it was incompetent, and the answer might be misleading. The objection was overruled, and counsel thereupon entered an exception, which was noted upon the minutes of the court before the jury retired.

Witness stated he did not know who was the owner of the ground and did not enquire. He did not claim it as his own, and used it without anybody's permission because others were using it, pasturing cattle there, but not in antagonism of the title of the owner

whoever he was. It was all commons. The Half-way house was ninety feet from the corner of B when he first knew it. He located the house by the cross-streets. The streets were all open in 1865 or 1866, but there were no pavements. The house was moved east twenty feet or so. The house is now where it was moved to. It might have been moved more than twenty feet. He only remembered it being moved once, which was about fourteen or fifteen years ago. It is the same house rebuilt. He commenced with the wood and coal business in 1872 next square below, and about that time or a year or two afterwards commenced to sell to Mrs. Bradley and Mrs. Eakle. Nick Jones' cabin was not there in 1872, and it was about that time after 1872 he drove his coal over the square to Bradley's and Eakle's houses. He put the sand on the lot about 1882 and some since that year, after the time the Downs house was moved. Witness had on the square at times about 150 loads of sand. He knew Mrs. Bradley very well. He did not remember when she died.

In order to further maintain the issues joined in this cause, the defendant called as a witness GEORGE W. BLANDFORD, who gave evidence tending to show that he was a member of the police force and acquainted with square 939. He first knew it in the latter part of 1867 or 1868. He was not on the force at that time. He was living then on A street between 6th and 7th S. E., and was
102 employed in the quartermaster's department just above square 939; remembered the Half-way house, which was located on square 939, where it is now, and was kept by a man named Downs. He did not know personally of its being moved. To his best recollection, the house was in 1868 where it is now. In 1868 it was about twenty-five feet from 9th street. He did duty about the square as a policeman first in the year 1870. The house was used for business purposes in 1868, and since that time, prior to 1872, it had been improved into a dwelling. There were no other houses or any fences on the B Street front than the Downs house in 1867 or 1868. There were some shanties on the 9th Street side of the square then, well up on the square, about 100 feet from B street, and colored people lived in them. A man by the name of Jones lived in one of them for some time. The shanties had fences around them; each had a little fence.

On cross-examination the witness stated that the most southernly house—the Jones house—was at least 75 or a hundred feet from B street. The Downs house, where it is now, had a fence around it, which extended about 25 feet front. He did not remember that the fence ran north of 10th street and the Downs had a garden on each side of his house.

In order to further maintain the issues joined in the cause, the defendant called as a witness JOHN JOHNSON, who gave evidence tending to show that he was 37 years old, and was born in Washington, D. C. He lived on square 939 in 1869, and lived there until eight years ago. He lived in his grandfather's house, Thomas Chit-

ham, which was the first house on 9th street from C street. In the group of houses was the Addison, Brown, White, Harrison, Jackson, and Nick Jones houses. The Jones house was the south house, and Jackson was next to him. There were sixteen or eighteen feet between the two. Harrison's was next, and there was about eight or ten feet between that and Jackson. All the frames had fences around them. He knew the Eakles and Bradleys, who lived on 10th street. They got their wood and coal in from the corner of 9th and B streets through their back gates. There was a roadway there. When the weather was bad the coal would be taken up the near way from the corner. The old driveway was south of the present row of bricks on 9th street. There was no other driveway near Harrison's north of the row of bricks on 9th street. Witness remembered that the Downs house was moved seventeen or eighteen years ago. He saw it moved; was living on 9th street at that time. It was moved twenty feet from where it is now.

On cross-examination witness stated that the only thing to show that the Downs house was moved was the remains of an old fence on the west side which was there a few years ago. He judged the distance the house was moved from the space between the two moves, which was twenty feet. He did not see the house built. He rented of Mrs. Baldwin part of the time and from Mr. Ashley. He moved about eight years ago. He paid rent to Mr. Ashley
103 to the time he left. He remembered the coal was taken up the back way to the second house in 1869. The driveway went right through the corner lot from 9th and B streets up the hill to the Eakle and Bradley houses.

On redirect examination witness stated there were two roadways. He paid rent to Mr. Ashley and left because Mr. Ashley wanted his property. Mr. Ashley told him he wanted the property because he was afraid some one would buy him out and take charge of the place. They tore the house down and moved it away about eight years ago. After they moved a fence was put around it from the corner witness lived on—from C street—the house that witness lived in to where the present brick house was built. Mr. Ashley erected the fence.

On recross-examination witness stated that the fence came from where he used to live down south to the present brick houses. Witness was then asked if he saw any other fence around any of those lots.

Counsel for the defendant objected to said question because it was not proper recross-examination. Objection was overruled, and exception was taken and entered upon the minutes of the court before the jury retired.

Witness stated, in answer to same, he did not see any other fences, nor did he see any other in 1889, except the fence from the brick houses on 9th street to B street.

Counsel for the defendant objected to the line of questions as not proper on recross-examination. The objection was overruled, and

an exception was reserved, which was noted upon the minutes of the court before the jury retired.

Witness stated Mr. Ashley did not tell him who he was afraid would take possession of the property; said only a certain party. He did not tell Mr. Ashley that Mr. Bradshaw had been to see him and desired to see his receipts, and that Mr. Bradshaw told him not to pay rent.

In order to further maintain the issues joined in the cause, the defendant called as a witness JOHN G. SLATER, who gave evidence tending to show that he knew square 939 and first became acquainted with it in 1874, at which time there was but one building on the B Street side of the square. It was a building occupied by Downs. The house was moved east twenty or twenty-five feet. Witness saw it while being moved; saw the old location and the new. When he first knew the square about one half of the square was vacant. On the C Street part there were two or three colored people's shanties. In the rear between 9th and 10th there were one or two shanties back on that alley. Each shanty had its own separate enclosure. The Downs house was moved about 14 or 16 years ago. Witness knew Mrs. Eakles, who lived in the square.

104 Counsel for the defendant then made a proffer to prove by the witness that Mrs. Eakle claimed compensation for lot 18 and declined to convey without the compensation, which counsel stated was in absolute contradiction of her testimony, in which she sought to show that she accepted what was apparently forced upon her. If the question was delivered, and if it was competent to go into the understandings and actions of the various people about various parts of the square, then the defendant was entitled to have all the actions. The court overruled the proffer and question of counsel, and an exception was taken, which was duly noted upon the records of the court before the jury retired.

On cross-examination witness stated that the Down- house stood about fifty or sixty feet from the corner of 9th street when he first knew it. It was moved twenty feet eastward and now stands, to the best of his recollection, about eighty feet from the corner of 9th street.

And the defendant, to maintain the issues joined, gave testimony to the court and jury by GOFF A. HALL, who testified as follows, to wit:

That he produces the general assessment books beginning with 1802 down to and including 1849, so far as those books related to square 939, and especially with reference to the land in controversy; that similar transcript of the books as relates to the property in question will be made by him at the request of counsel for the defendant, and that the first book of assessment is for 1803, but he knows nothing of that book.

And thereupon counsel for defendant offered said book in evidence

and read therefrom the respective numbers of square feet contained in each lot referred to and given by said books as follows, to wit:

Lot 1,	4,343¾	feet; lot 5,	6,460 feet.
Lot 2,	4,871	" lot 6,	6,460 "
Lot 3,	6,460	" lot 7,	4,871 "
Lot 20,	5,955¼	" lot 8,	4,343¾ "
Lot 4,	6,460	" lot 9,	9,159¼ "

[redacted] aforesaid evidence counsel for the defendant [redacted] it should be stated [redacted] Baldwin's [redacted] yed to Bald-

After the foregoing, witness further testified that those books, the numerical books from 1803 to 1849, both inclusive, were in his custody as assistant assessor; that the tax ledgers are made from the general assessment books or sheets, and that has been the practice as far back as he has had any connection with the office; that he has no knowledge how the tax ledgers were made up prior to his connection with the office.

On cross-examination witness testified it appears from the books there are two sets of square feet—one in pencil and one in
105 ink; does not remember when those pencil numbers were not there in that book as well as the ink numbers. The pencil numbers were there since he had been in office, from the time of his first connection with it; could not say when his attention was called to that. It has been some years ago.

To each of the foregoing testimony given by the witness counsel for defendant objected to the giving of the same; but the court overruled said objection, and exceptions were taken and noted on the minutes of the court before giving said testimony and before the jury retired.

And thereafter counsel for the defendant and counsel for the plaintiff compared said lots of square feet in pencil with the lots in square 939 as numbered in pencil in the records of the surveyor's office and Mr. Stewart's register, referring for convenience to a map on which the ink numbers appeared as black and the pencil numbers as red. This comparison showed as to lot 1 there are no pencil numbers, and that is given as 4,343¾.

Lot 2, 5,955 square feet; in red numbers, 5,957 and a fraction.
Lot 3, 5,957 square feet; red number, 5,957.
Lot 4, 4,320 " " " " 4,343.

Book 9.

Lot 5,	4,906	square feet;	red	number,	4,832.
Lot 6,	6,460	"	"	"	6,441.
Lot 7,	6,460	"	"	"	6,441.
Lot 8,	6,460	"	"	"	6,441.
Lot 9,	6,460	"	"	"	6,441.
Lot 10,	4,906	"	"	"	4,832.
Lot 11,	4,343	"	"	"	4,343.

Lot 12, 5,955 square feet; red number, 5,957.
Lot 13, 5,955 square feet; red number, 5,957.
Lot 14, 4,343 " " " " 4,343
Lot 15, 4,906 square feet; red number, 4,832.
Lot 16, 6,460 " " " " 6,441.
Lot 16, 6,460 " " " " 6,441.
Lot 18, 6,460 " " difference in red number, 19 ft.
Lot 19, 6,460 " " " " " " 19 ft.
Lot 20, 4,906 " " in red number on plat, 4,832.

And before the giving of the aforesaid testimony to the jury counsel for the defendant objected to the same, as far as relating to the pencilling numbers of square feet in said book; which objection the court overruled; *at* which counsel for the defendant excepted (before the reading of the same to the jury); which exceptions were each duly noted on the minutes of the court before the jury retired.

And thereupon the witness further testified on cross-examination that the next general assessment book after 1849 was 1854; that book shows square footage which appears to correspond with those pencil changes on the other book; that the next assessment
106 book is 1859, and is the same as the square footage which appears to correspond with the pencil changes.

After the foregoing the counsel for plaintiff stated to the court and jury that the fact is that in 1849 for the first time these ink numbers on the general assessment book of 1849, which corresponds with ink numbers on the lots, had pencil numbers written above them, and from that time on they appear in the assessment book 9 according to the square footage of the pencil numbers—that is, after 1851, when Baldwin bought down, the square footage had been in accordance with the pencil numbers and not with the ink numbers.

Counsel for defendant desired the jury to understand the change had its foundation in pencil numbers.

To which counsel for plaintiff replied they were interested in finding out which was right.

Transcript prepared by G. A. Hall, witness for defendant, and offered in evidence as follows, to wit:

General Assessment, Washington City.

Numerical book.

Year.	Square.	Lot.	Square feet.	Rate.	Value ground.	To whom assessed.
1803	939	1	4,343¾	½	21	George Walker.
		2	4,871		24	"
		3	6,460		32	"
		4	6,460		32	
		5	6,460		32	
		6	6,460		32	
		7	4,871		24	
		8	4,343¾		21	
		9	5,955¼		29	
		10	5,955¼		29	George Walker.
		11	4,343¾		21	"
		12	4,871		24	"
		13	6,460		32	"
		14	6,460		32	"
		15	6,460		32	"
		16	6,460			
		17	4,871			
		18	4,343¾			
		19	5,955¼			
		20	5,955¼		29	George Walker.
1809	939	1	4,343¾	½		George Walker's h'rs.
		2	4,871	"		"
		3	6,460	"		"
		4	6,460	"		Public.
		5	6,460	"		"
		6	6,460	"		"
		7	4,771	"		"
		8	4,343¾	"		"
		9	5,955¼	"		"
		10	5,955¼	"		George Walker's h'rs.
		11	4,343¾	"		"
107						
		12	4,871	"		George Walker's h'rs.
		13	6,460	"		"
		14	6,460	"		"
		15	6,460	"		"
		16	6,460	"		Public.
		17	4,871	"		"
		18	4,343¾	"		James Davidson.
		19	5,955¼	"		Public.
		20	5,955¼	"		George Walker's h'rs.
1824	939	1	4,343	¼		William Brent.
		2	4,871			"
		3	6,460			"
		4	6,460			Public.
		5	6,460			"
		6	6,460			"
		7	4,771			"
		8	4,343			"
		9	5,955			"
		10	5,955			William Brent.
		11	4,343			"
		12	4,871			"
		13	6,460			"
		14	6,460			"
		15	6,460			"
		16	6,460			Public.
		17	4,871			"

Numerical book—Continued.

Year.	Square.	Lot.	Square feet.	Rate.	Value ground.	To whom assessed.
		18	4,343	.....	.....	William Davidson.
		19	5,955	.....	.....	Public.
		20	5,955	.....	.....	Wm. Brent.
1829-'33	939	1	4,343	¼	10	W. Brent.
		2	4,871	.....	12	"
1829-'33	939	3	6,460	.....	16	W. Brent.
		4	6,460	.....	16	
		5	6,460	.....	16	
		6	6,460	.....	16	
		7	4,771	.....	11	
		8	4,343	.....	10	
		9	5,955	.....	14	
		10	5,955	.....	14	W. Brent.
		11	4,343	.....	10	"
		12	4,871	.....	12	"
		13	6,460	.....	16	W. W. Lowe.
		14	6,460	.....	16	"
		15	6,460	.....	16	"
		16	6,460	.....	12	"
		17	4,871	.....	10	Wm. Davidson.
		18	4,343	.....	14	
		19	5,955	.....	14	W. Brent.
		20	5,955	.....	10	
1834	939	1	4,343	.....	12	
		2	4,871	.....	16	
		3	6,460	.....	16	
		4	6,460	.....	16	
1834	939	5	6,460	.....	16	
		6	6,460	.....	11	
		7	4,771	.....	10	
		8	4,343	.....	14	
		9	5,955	.....	14	
		10	5,955	.....	10	
		11	4,343	.....	12	
		12	4,871	.....	16	Thos. Lowe, p'r Geo. Co.
		13	6,460	.....	16	"
		14	6,460	.....	16	"
		15	6,460	.....	16	
		16	6,460	.....	12	
		17	4,871	.....	10	
		18	4,343	.....	14	
		19	5,955	.....	14	
		20	5,955	.....	9	Wm. Brent.
1839	939	1	4,340	M. 2.	10	"
		2	4,871	"	13	"
		3	6,460	"	13	
		4	6,460	"	13	
		5	6,460	"	13	
		6	6,460	"	10	
		7	4,771	"	9	
1839	939	8	4,343	M. 2.	12	Jno. H. Smith.
		10	5,955	"	9	"
		11	4,343	"	10	"
		12	4,871	"	13	J. Lowe & M. Austin.
		13	6,460	"	13	"
		14	6,460	"	13	"
		15	6,460	"	13	
		16	6,460	"		

Imps. 500

Numerical book—Continued.

Year.	Square.	Lot.	Square feet.	Rate.	Value ground.	To whom assessed.
		17	4,871	M. 2.	10	
		18	4,343	"	9	
		19	5,955	"	12	
		20	5,955	"	12	Wm. Brent.
				Mills.		
1844	939	1	4,340	3	13	W. Brent.
		2	4,871	.....	14	"
		3	6,460	.....	19	"
		4	6,460	.....	19	
		5	6,460	.....	19	
		6	6,460	.....	19	
		7	4,771	.....	19	
		8	4,343	.....	13	
		9	5,955	.....	18	
		10	5,955	.....	18	John H. Smith.
1844	939	11	4,343	.....	13	"
		12	4,871	.....	14	"
		13	6,460	.....	19	J. Lowe & M. Austin.
		14	6,460	.....	19	"
		15	6,460	.....	19	"
		16	6,460	.....	19	
		17	4,871	.....	14	
		18	4,343	.....	13	Wm. Davidson.
		19	5,955	.....	18	
		20	5,955	.....	18	W. Brent.
1849	939	1	4,340	M. 4.	17	W. Brent.
		2	4,871	.....	19	"
109		3	6,460	.....	26	J. C. Brent.
1849	939	4	6,460	.....	26	W. T. Baldwin, 1852.
		5	6,460	.....	26	"
		6	6,460	.....	26	"
		7	4,771	.....	19	"
		8	4,343	.....	17	"
		9	5,955	.....	24	"
		10	5,955	.....	24	Martha A. Austin.
		11	4,343	.....	17	"
		12	4,871	.....	19	"
		13	6,460	.....	26	"
1849	939	14	6,460	.....	26	Martha A. Austin.
		15	6,460	.....	26	"
		16	6,460	.....	26	W. T. Baldwin, 1852.
		17	4,871	.....	19	"
		18	4,343	.....	17	W. Davidson.
		19	5,955	.....	24	W. T. Baldwin, 1852.
		20	5,955	.....	24	W. Brent.
1854	939	1	9,340	1½	65	W. & E. Brent & others.
		2	5,955	.....	89	Wm. Brent.
		3	5,955	.....	89	John C. Brent.
		4	4,340	.....	65	Wm. T. Baldwin.
		5	4,906	.....	74	Wm. T. Baldwin.
		6	6,460	.....	97	"
		7	6,460	.....	97	"
		8	6,460	.....	97	J. C. & N. S. Weed.
		9	6,460	.....	97	W. T. Baldwin.
		10	4,906	.....	74	Martha A. Austin.
		11	4,340	.....	65	"
		12	5,955	.....	89	"
		13	5,955	.....	89	"

Numerical book—Continued.

Year.	Square.	Lot.	Square feet.	Rate.	Value ground.	To whom assessed.
1854	939	14	4,340	.....	65	Martha A. Austin.
		15	4,906	.....	74	"
		16	6,460	.....	97	W. T. Baldwin.
		17	6,460	.....	97	"
		18	6,460	.....	97	Rich'd Bradley.
		19	6,460	.....	97	Wm. T. Baldwin.
		20	4,906	.....	74	W. & E. Brent & others.

Tax ledger.

Year 1852, William T. Baldwin, folio 102.

Square.	Lot.	Ward.	Value ground.	To whom assessed.
939	4	6	26	
	5	.....	26	
	6	.....	26	
	7	.....	19	
	8	.....	17	(J. C. & N. Weed. 10–274.)
	9	.....	24	
	16	.....	26	
	17	.....	19	
	19	.....	24	Paid Aug., '52.

110 Year 1853, folio 105, William T. Baldwin.

Square.	Lot.	Ward.	Value ground.	
939	4	6	26	
	5	.....	26	
	6	6	26	
	7	.....	19	
	9	.....	24	
	16	.....	26	
	19	.....	24	Paid Aug., '53.

Year 1853, J. C. & N. S. Weed, folio 180.

Square.	Lot.		Value ground.	
939	8	.....	17	Paid by sale May, '54.

(Signed) GOFF A. HALL,
Ass't Ass'r D. C.

June 16, '97.

In order to further maintain the issues joined in the cause, defendant called as a witness DENNIS W. MAGRAFF, who gave evidence tending to show that he was 56 years old and was acquainted with square 939. He lived on the square part of the years 1866 and '7; did not know it before that time. He boarded in 1866 and '67 at Mrs. Bradley's, on 10th street between B and C N. E. There were but three houses on the square at that time. He was a carpenter then in the quartermaster's department and did not know the square before he went to board at Mrs. Bradley's. He was working at Lincoln depot, which was located on 13th or 14th or 15th streets. When he went to board at Mrs. Bradley's, Downs had a sutler's shop in the square. He knew Downs well.

Witness stated that he lived on 10th street midway of the block, at Mrs. Bradley's. Mrs. Eakle's house was the last house between the corner of B and where he lived; did not think Downs' house was on the corner, because the street was not fairly open. At that time there was no fence on southern part of the square. He played ball many a time on the south half of the square.

On cross-examination witness stated that he was on the square. There was but three houses there—Mrs. Eakle's, Mrs. Bradley's, and quite a farm-house further up on 10th street near C, and some shanties in the rear of 9th street. Witness stated he knew Downs at that time, but did not think he was married then; thought Downs had a garden and a fence in the rear of the house. The garden was in the rear. There was not a colored man's cabin back of the house fenced separately.

111 In order to further maintain the issues joined in the cause, defendant called as a witness GEORGE SEITZ, who gave evidence tending to show that he was 82 years old and had lived in Washington 63 years. He knew William Tyler Baldwin and he built a house on New York avenue in 1838 or '39. Witness was then living on Pennsylvania avenue, but he had an uncle living on 10th street between New York avenue and K streets, not far from Baldwin, and he and his uncle used to pass Baldwin's often.

Baldwin lived on New York avenue until about the time William Henry Harrison was President; about 1840.

Witness stated he remembered Baldwin living on New York avenue between 9th and 10th N. W. after William Henry Harrison's inauguration, which was March 4th, 1841. That was his last recollection of seeing William T. Baldwin on New York avenue, because he did not go there often after that.

On cross-examination witness stated he was married in 1839, and it was before that he saw Baldwin on New York avenue.

On redirect examination witness stated he would not be positive he had not seen Baldwin after his marriage in 1839; knew he saw him before that time.

In order to further maintain the issues joined in this cause, the defendant called as a witness GEORGE C. WILSON, who gave evidence tending to show that he was 70 years old and had known

William Tyler Baldwin, who was a bricklayer, and when he first knew him he was living on New York avenue between 9th and 10th N. W. Baldwin came there about 1838 or '39 and staid there six or seven years. He was there during the campaign of William Henry Harrison. He was there during the campaign of Quay and Polk, which was in the year 1844. Witness used to see him often, because witness' father was a contractor, and both witness' father and Baldwin's father kept horses. Witness' father lost his stable and rented a portion of Baldwin's stable on New York avenue near 9th street.

On cross-examination witness stated he knew Mr. Baldwin very well. He believed Baldwin had some connection with marketing, in addition to keeping horses. Witness was then asked the following question:

"Q. He used to raise vegetables out northeast, did he not?"

Counsel for defendant objected to the question as not proper cross-examination, and the form was obviously leading.

The court overruled the objection, and counsel entered an exception, which was duly noted on the records of the court before the jury retired.

Witness stated he was not sure that Baldwin attended market, but knew he had a horse and cart at that time. He did not know that Baldwin had anything to do with raising vegetables out northeast. He did not know that Baldwin attended market. He only knew that Baldwin's son Gabriel used to get up early in order to have the horses ready.

112 In order to further maintain the issues joined in this cause, the defendant called as a witness REUBEN M. HARLOW, who gave evidence tending to show that he was at present a member of the police force, and had been in Washington a little over 62 years; came here August 31, 1862, and went into the commissary department in the army, and came back to Washington in January, 1871; since that date has remained here.

Witness first became acquainted with square 939 in 1878—knew where Downs lived in the square; remembered the removal of the house, which was in 1882 or '83. Witness was then living at corner of 12th and Park place, N. E. He saw the house being moved. After the house was moved you could see distinctly where the house had been moved from. There was no sod on the place where it was moved from. The house was moved east just 18 to 20 feet. There was sod on each side of the house, but the place from where it had been moved had no sod on it.

On cross-examination witness stated that he was not on the beat in which the Downs house was while it was being moved, but passed the house twice a day a good many years.

He passed the house twice a day for three or four years and did not remember seeing a telegraph wire along the street at that time, nor did he remember a telegraph wire being fastened to the house; did not remember seeing a telegraph wire down, torn loose from

the house, when the same was moved. There were shade trees planted on the street by the parking commission. There was one tree a little below the house, not exactly in front of it. The tree stood a little below where the house had been, towards the 9th Street side. Witness could not state how far the house was from 9th street before it was moved. He could not tell how far the house was moved, because there was no sod on the place where the house stood, though there was sod all around and it was discernible where it was moved from. Witness saw the house last week, but could not tell the exact distance it was from the corner of 10th street. There is a telegraph pole on the side of B street now, below Downs' house towards 9th street; nearer 9th than it is towards 10th, about 40 feet from the Downs house. It does not stand just opposite the bare place on which the house formerly stood; that he is sure of.

In order to further maintain the issues joined in this cause, defendant called as a witness GEORGE WILLIAM FOWLER, who gave evidence tending to show that he resided at No. 234 10th street N. E., and knew both Mrs. Eakle and Mrs. Bradley, who lived south from him. Witness knew the house on the square called the Gypsey house, which was north of his house next door. He moved in his present residence August 1st, 1872, at which time a man by name of Jeffors lived in the Gypsey house. Jeffors lived there two years to the year 1874. After Jeffors moved the house was idle for a while, and then a white family moved in; it was about six months after Jeffords had moved. The white family remained in the house about one year. John Harrison then moved in the house, about four or five years after he moved there in 1872.

113 Harrison lived in the house for fifteen years. He was a horse jockey, buying and selling horses. The house was called the Gypsey house because Harrison, who was acknowledged to be a gypsey, made his residence there.

On cross-examination witness stated at the time he went there in 1872 there were four houses fronting on 10th street. He built his own house there in the spring of 1872.

Witness stated, when asked on what lot he built his house, that it was a hard question to answer, because there were two sets of numbers.

He was then asked, "When did you find that out?"

Counsel for defendant objected to the question on the ground that it was not cross-examination.

The court overruled the objection, and counsel thereupon entered an exception, which was duly noted upon the records of the court before the jury retired; the question was not answered by the witness.

Witness stated the Gypsey lot adjoined his, the two houses being about fifteen or twenty feet distant.

In order to further maintain the issues joined in the cause, defendant called as a witness WASHINGTON S. WEIGHT, who gave evidence tending to show that he was 75 years old and lived in Prince

George's county, Maryland; came to Washington in 1842 and lived at the corner of F and 7th streets S. E. In 1854 he lived on North A street between 7th and 8th N. E. and lived there until 1866, when he moved to the country. He moved back to the A Street house in 1851 and lived there eight or nine years. Then went to Prince George's country, Maryland, where he has remained until the present time.

Witness was well acquainted with William Tyler Baldwin; knew him first in 1847. Baldwin was a bricklayer and built a chimney for him at the house on North A street between 7th and 8th streets.

In 1846 witness' mother moved in Baldwin's house, corner of 10th and East Capitol. Baldwin built him a chimney in 1854. Witness returned from Annapolis in 1851 and saw Baldwin in 1854, who was then living at his own place, corner of 10th and East Capitol streets.

Witness knew square 939; passed over it often to get his horses, which were out on the common in 1861.

Prior to 1861 he had passed over the square about one hundred times. He enlisted in the army in 1861 and remained in it ninety days. Prior to that time he passed over the square often. The first time he saw the square there was no fence on the south part of it. In 1861 there was a little frame house on one part of the lot and his impression is that that house had been moved further east.

Witness was certain the house was either moved or there had been — addition put on to make it go further east, because he had passed it often; would go over the lot in his buggy.

114 There were no fences to prevent his driving over it. He lived out there, and no streets were opened. The only street closed was General Henderson's square, the second square above 939. There was no enclosure around square 939, to his knowledge.

Witness stated he remembered the square prior to 1861, but was unable to give date; could not say whether it was one, two, or three years earlier. He remembered the Howards and where they lived, because he did the tin-work on the house, but was unable to remember the year. It was before the war. He did tin-work all around that part of the city.

When he did the tin-work on the Howard house before the war there was no fencing around square 939. Upon the hill of the square to the left of the square there were some shanties. He noticed them in 1861.

The work was done on the Howard house before he enlisted in the army.

Witness remembered Coleman, who lived between 8th and 9th, B and C streets, and did the tin-work on his house.

At no time during witness' recollection was there any enclosure around square 939. He was positive about that, because he passed it so often. He had five horses then, which were located on North A street between 7th and 8th. When he went after his horses he would pass over the square 939, the south part of it, because it was all commons then. He went in the army the 17th day of April,

1861, the day he was 38 years old, and he was now 74. He was born in 1823.

On cross-examination witness stated he could not remember date on which he saw square 939 prior to the year 1861. He had no particular business on the square prior to that time except passing by there. When he used to go after his horses there was Mrs. Eakle's house on the square, the Dumphrey place, the house where the Gypseys had their home. He could not say how many houses were on that square then.

In 1861 the Downs house, then a rum-mill, was on the square about one-third way from the east part of it, near the corner of 10th street. He visited Mrs. Eakle sometimes after the war of 1861 commenced.

The house where it stands now was moved from its original position east. He could not state where it fronted in 1861. In his opinion it was right in the middle of a common. There were few streets open. B street was open as far as 9th street. The Downs house was not diagonally across from the Howard.

Witness did not remember where Baldwin was living when he built the chimney for him in 1854 or '55. He knew that Baldwin's son Gabriel was living right opposite the square 939. Gabriel Baldwin furnished the sand for his house. It was for an alteration in his house; not when the chimney was built. Witness could not locate the year.

On redirect examination witness stated William T. Baldwin built the chimney to his house; could not remember how long after that it was that Baldwin died.

115 In order to further maintain the issues joined in this cause, defendant called as a witness MARGARET DEAN, who gave evidence tending to show that she has lived in Washington all her life and was married in 1864; prior to marriage lived on B street between 1st and 2nd N. E. Witness had known 939 for the last fifty-four or fifty-five years. When she first knew it there were living around there Mrs. Baldwin, Mrs. Howard, Mrs. Dumphrey, and a man by name of Cunningham.

Mr. Baldwin lived on 10th street near B in an old frame house, which was burned down a good many years ago. There was a garden around the house in which she raised garden truck. There were cherry trees around the house.

Witness saw the square 939 before the war and there was no enclosure then around it. She had a sister who lived on D street between 10th and 11th, whom she used to visit in 1862 and '63.

Witness remembered seeing the square two or three years before the war.

On cross-examination witness stated she used to visit her sister in 1862 and '63; knew a good many people in the neighborhood, but did not visit them, and did not remember any particular occasion on which she was at square 939 prior too '62 or '63.

On redirect examination witness stated she came to live on Capitol Hill about 55 years ago; could not remember house on square

939; there were all commons out there. She could not tell whether there were any houses there. She knew Mr. Samuel Clark and his sister. The sister lived in one of Mr. Baldwin's houses. The house is yet standing. It was on either 9th or 10th street. Witness was out there once when a child, about 50 years ago, with a niece of the Baldwins or Clarks, who went there to see her grandmother. They went through the back way of the house where Mr. Baldwin lived to reach this house over the commons. She could not remember whether the cottage was north or south of the Baldwin house. To reach the Clark house they went right up the street. There was just a path, no street.

Witness did not see any fence on the square. The house was either — 9th or 10th street; witness could not remember which. The Clark house was on the left hand as you go up to Mrs. Baldwin's house, not far from Mrs. Baldwin's, and did not know if it was on the next square. Witness could not state the exact distance. There was a small fence around the Clark house.

In order to further maintain the issues joined in this cause, the defendant called as a witness DANIEL C. SHAW, who gave evidence tending to show that he was 60 years old; came to Washington in the fall of 1857. He lived in Southeast Washington, on New Jersey avenue, near the Winter or Berry place; knew the neighborhood and square 939 in the year 1857. He came from the country, and used to stroll around that section on Sundays. When he first knew
the square in 1857 there were only three buildings on it,
116 which were located on 10th street. The old story-and-a-half
house was on north end of the square. There were two houses built together some distance south of it. There was nothing on the B Street side in 1857; has continued to know the square up to the present time. The first building on the B Street side occurred in the latter part of the war, called the Half-way house; thought it appeared in the latter part of 1864. One Downs was the proprietor. Did not know of his personal knowledge in regard to the removal.

No other structure was put on B street between 1857 and the time the Half-way house appeared. In 1864 to 1866 witness lived next door to corner 6th and E S. E.; then moved to 8th and D N. E. Witness knew of William T. Baldwin; he knew such a man lived between 9th and 10th, opposite the square 939, about the year 1857 and 1858. There was a gulley in front of the house, and on the upper edge of it were barrel staves setting up. The gulley was on what is now the edge of the street, about where the curb-stone now is. There were trees around the house.

On cross-examination witness stated that in 1857 he was a paper-hanger; that was his occupation up to eight or ten years ago, since which time he has been out of business.

Witness stated he often went into the neighborhood of the square 939, looking after business, collecting bills, and as in the winter business was dull he had a good deal of leisure time and spent the

same gunning and walking around with his dog; that is the way he got acquainted with the neighborhood before the war.

Square 939 was a common, open; the square on the west was a garden and on the east was a garden; the squares on each side were enclosed before the war; the square northeast of it was Cunningham's square and a garden. Witness did not remember how the square north of square 939 was.

Witness stated that his attention was called to square 939 particularly because he was told a family by name of Lowe lived in the house or had lived in the house on 10th street, in this square, and he had a family connection by that name. The Lowes lived in the house now called the Gypsey house; he did not make acquaintance with the family, so could not tell the number of the family; he simply inquired around. Witness stated he did not know as a matter of fact that Mr. Lowe and none of his family had lived in the house for 20 years prior to 1857; he did not remember the names of those who had told him that the Lowes lived in the house. In the early part of the war he was working at his trade, and between years 1861 to 1864 lived on 6th and E street S. E., about one mile from this square. Witness did not remember inspecting square 939 during the early part of the war, and in the years 1861, '62, and '63 he had no business in the neighborhood of the square. In 1861, '62, and '63 the only thing that took him to the square 939 and its neighborhood was walking around in his leisure hours and making inquiries here and there. In that way he got acquainted with square 939; the square was open, a common, and the others were not. The square on the west and east of it was a garden.

117 In the summer of 1858 or 1859 one thing attracted him to square 939, and that is he used to admire the cherries on the trees back of the Lowe house. He did not know if Lowe was living there at that time. He did not ask for the cherries and did not go in to get them. At that time he was twenty-four years old. The square east of square 939 was a garden during the early part of the war and fenced in. The square west of 939 was a garden and fence, known as Coleman's garden. During the first year of the war this was the case. Witness did not remember in reference to the square north of 939. These squares were not occupied by the troops during those years. The square east of 10th street was occupied by soldiers, and there was some scattering of soldiers on the square east of 939. Witness did not remember soldiers being on square 939 during the war. There were none to his recollections. He did not think the soldiers were there. The Half-way house was built between two of his trips around that part of the town. It was built in the year 1864, in the latter part.

He did not know Downs then, though he had been in the Half-way house to get liquor during the war. He was told Downs kept the house. Witness stated he had been around the square since the war; could not remember how long the Half-way house stood as it was. It was a one-story house. It was 20 or 25 feet east of the present Downs house.

On redirect witness stated the square west of 939 went by the name of Coleman; called Coleman's garden. It was called that from his earliest recollection of that part of the town.

In order to further maintain the issue joined in this cause, defendant called as a witness EDWARD C. CLINKINS, who gave evidence tending to show that he came to Washington to live in 1863 and lived on B street between 6th and 7th N. E. He moved from there to 9th street between B and C streets N. E. He went there and leased the ground in 1864 from Mrs. Baldwin. He travelled past square 939 to go to his house. It was the only way to travel from Butcher Howard's, on Maryland avenue. He used to go that way. He would go past Howard's up to his house. There was only a pathway. They all moved out there—his aunt and all the family—in the fall of 1862. He visited the square 939 in 1863, after the battle of Gettysburg; did not remember of any house being on B Street side of the square then. The Half-way house was not there in 1863. It was put up after the battle of Fredericksburg. Along about 1864 it was put in order to catch the trade of the people out at the Lincoln depot.

When witness first knew the square 939 there were but three houses on same. The old house owned by Mrs. Baldwin's sister and two frame houses. They are there now. There were a whole lot of cherry trees upon the upper part of the square, and from 9th street down to B there was nothing at all when he first noticed the square. The three houses referred to were on 10th street fronting same. At that time there were no houses on the 9th Street side.

In 1855 to 1856 a lot of colored people from Maryland and
118 Virginia put up little houses on 9th Street side and leased the ground from Mrs. Baldwin. The shanties were on the upper end of the square. There were no shanties at the lower end next to B street. The shanties came from B street down to the edge of the hill, and the last one was in front of old man Coleman's, on the opposite side, and was occupied by an old fellow named Nick Lowe. Witness could not state exactly the number of feet from B street; thought it was between 200 and 400 feet. There were no houses fronting on 9th street, except the shanties. On the Coleman place was an old house and barn near about the centre of the square. Mrs. Howard was on the corner of B and 9th streets, and Coleman's lot was on corner of C and 9th.

On cross-examination witness stated that the shanties were erected in 1865 and '66, the ground being leased from Mrs. Baldwin. Some of the shanties were there before Downs built the Half-way house. Witness could not state positively that Downs put the house up; only knew he was there selling whiskey; could not tell the day and month it was erected. It was not in the square when he went there, but after he returned it was up.

Counsel for the defendant thereupon offered in evidence (and for the purpose of corroborating the testimony of the witness Fowler) a deed from H. A. Gilbert and wife to John Harrison, dated June 23, 1875, and recorded in Liber 791, folio 34, conveying lot No. 12,

in square 939, also known as lot No. 15, in Mary Baldwin's *et al.* sub. of said square.

Counsel for the defendant stated that the plaintiff had offered a deed in Liber 698, page 382, from John Hardy *et al.* to John Chester; that he would now offer a deed in correction of the one offered by plaintiff. It was a deed between John Hardy, Louisa W. Page, Caroline A. Bowen, and William T. Smith, of the first part; Mary Baldwin, widow of William T. Baldwin, and Christopher Engle, as trustee for her, of the second part, and Dr. John Chester, of the third part. Deeds were dated Nov. 30, 1872, recorded in Liber 706, folio 464, and recites the deed already mentioned. Counsel stated that the deed offerred by the plaintiff, referrred to, purporting to convey lots 10, 11, 13, and 15, in square 939; the deed he offerred contained recitals explaining what was meant by that and proceeds to convey the same lots under another description. The deed was dated in November, 1872.

After *description* the court admitted the deed in evidence.

In order to further maintain the issues joined in this cause, the defendant called as a witness MAHLON ASHFORD, who stated that he had been engaged in examining titles in the District of Columbia for about thirty years. In the course of that examination he had occasion to consult the records in the surveyor's office, and in making said examination he never paid any regard at all to pencil numbers in a record, either in the surveyor's office or any other record, unless there was something connected with it to show that it was done by authority.

119 Witness knew square 939 and had occasion to examine titles in that square. He examined titles to lots 1, 2, 3, and 20, in the square, about ten or twelve years ago. He might have examined something in the square before the formation of the Real Estate, Title and Insurance Company. He could not remember exactly, but his recollection was that the pencil numbers appeared in the surveyor's office records fifteen or twenty years ago.

He paid no regard to the pencil numbering in the square. Witness was asked when he examined the title to lots 1, 2, 3, and 20, in the square, where he found the record title of the lots to be. The court sustained the objection of the plaintiff's counsel as to the questions, and counsel for the defendant entered an exception as to the ruling, which was duly noted upon the records of the court before the jury retired.

No cross-examination.

Ashley Deed.

Counsel for the defendant stated he desired to offer in evidence certain deeds showing the conveyance by the Ashleys, including these plaintiffs, of lots 7, 8, 9 according to the ink numbers, or lots 10, 11, 12 according to the pencil numbers. Counsel for plaintiff then remarked:

"These plaintiffs. You would not try these cases together?"

Counsel for the defendant objected to the remark as not proper. The court ruled the remark out. The counsel for the defendant entered an exception to the remark, which was duly noted upon the minutes of the court before the jury retired.

Counsel for the defendant thereupon read in evidence a deed from Nehemiah B. Ashley *et al.* to Joseph T. Crow, conveying all of original lot No. 8, in square 939, and now known as lot No. 11, in sub. of said square made by Mary Baldwin *et al.* and recorded in the surveyor's office of said District in Liber C. H. B., folio 41; deed was dated October 28, 1886, and was in Liber 1218, folio 222, recorder's office; consideration stated in said deed was $1.

Also deed from Nehemiah B. Ashley *et al.* to Peter Shields, dated November 15, 1886, recorded in Liber 1218, folio 231, conveying, in consideration of $5, the part of original lot 9 now known and designated as sublot 12, in square 939. It described black-ink number 9, the W. 21 feet of lot 9 by ink numbers (being part of lot 9, known as lot 12 in Mary Baldwin *et al.* sub.).

Also deed from Nehemiah B. Ashley *et al.* to Clementina Bridwell, dated November 15, 1886, recorded in Liber 1223, folio 356, conveying, in consideration of $5, part of original lot 9, now known and designated as sublot 12 in square 939; also deed from Nehemiah B. Ashley *et al.* to Ida Finch, conveying all their right, title, and interest in original lots 8 and 9, in square 939, for sublots 11 and 12 in Mary Baldwin *et al.* sub. of said square *in* as recorded — the surveyor's office of the District of Columbia.

The deed recited that it was a quitclaim deed, made to supply the accidental omission after the name of Clementina Bridwell of the words "her heirs and assigns, to her and their sole use
120 and benefit forever," in a deed executed by them to said Bridwell November 15, 1886, consideration being $1.

Also deed from Nehemiah B. Ashley and wife, Mary M. Ashley; Sarah E. Beardsley and H. Frank Beardsley, her husband; Mary A. Breckenridge and John S. Breckenridge, her husband, of Brooklyn, New York, to Claudia M. Moran, dated November 12, 1887, and recorded in Liber 1292, folio 135, consideration $1, all of original lot No. 7, square 939, and now known as sublot No. 10 in square 939 of Mary Baldwin *et al.* sub. of said square.

Defendant's Testimony.

Book 2.

Defendant, further to maintain his issue joined, by HANNAH ENGLE gave testimony to the court and jury as follows, to wit:

That she resides at 310 on 2nd street N. E., between C and D streets, and had been living there 35 years. She moved there in 1863, and before that had been living on B street between 9th and 10th streets N. E., in 1861, in the early spring or late in the fall. Her husband rented the house from husband of Mrs. Mary Baldwin. The house which he rented was on the corner of 10th street and B street N. E., and was on the south side of the street, and a two-

story house. It was surrounded by the whole square. It had on it cherries, peaches, damsons, and such like trees and bushes; moved from there early in the fall of 1865 to her present residence. The square, in 1861, had a paling fence around it. It was around the whole square. Had a sick child and did not go out of the house for two months after she (witness) moved there; did not notice the condition of the square opposite on B street, in 1861, until after a couple months, when she went more outside of the house, and then, in 1861, there was no fence there.

Did not see any house on the B Street side of the square in 1861. There were none on 10th street, but further up 10th there was a double house, in which Mr. Bradley and Mr. Eakle lived, and there was another house or two above those; knows Christian Maisak and he and she (witness) came from same county, Wurtemberg, near Heilbrun. When she moved out there B street was passable, but the rest was not. At the time she lived on corner B street and 10th street no house was put on B Street front of the square, across the square from her house. She did not know of any house as the Half-way house in 1865, when she moved away; had been built on the B Street side of the square opposite to where she lived. When she was living in the house on south side of B street near 10th street, her husband was engaged in the marketing business. When the war broke out the soldiers took down her fence and then her husband and she kept a restaurant and continued that business until the soldiers went away.

On cross-examination the witness testified she remembered the battle of Bull Run—the first and second battles—and she was living
121 corner of 10th and B streets the first battle of Bull Run and was living there when the war broke out; don't remember how long she lived there before the war broke out; moved from there in the early fall of 1865; that was after the war was over; moved there in early spring of 1861 and commenced to raise garden stuff; confident it was in the spring of 1861. The fence was taken down in the fall of 1861; only the front fence on B street was taken down. Soldiers were camped near where she lived in 1861, right in front of her, across B street; that was the north side of B, and there where the camp was. The soldiers were on the north side of B street, across from where her house was; did not remember how long they staid on the north side of B street from where she lived; think they were there about a month, and it was in fall of 1861, and was in fall of 1861 part of the fence around her place was taken down; did not recollect that the soldiers covered the whole or part of the square across from her place. The soldiers were there on the square on the north side of B street were infantry and not cavalry. After the soldiers went away nobody else came on that part of the square across from where she lived. There was no house there; it was vacant during the war. There was no fence and no houses and nothing there on B street across from where she lived up to the time that she went away from there; did not know anything of that square after 1865; has passed it since and paid no attention to it; knows Mrs. Howard; she lived corner 9th and B

Surveyor's Office, District of Columbia
Washington June 4/97.

Plat of Survey locating house erected on lot 28
Square 939

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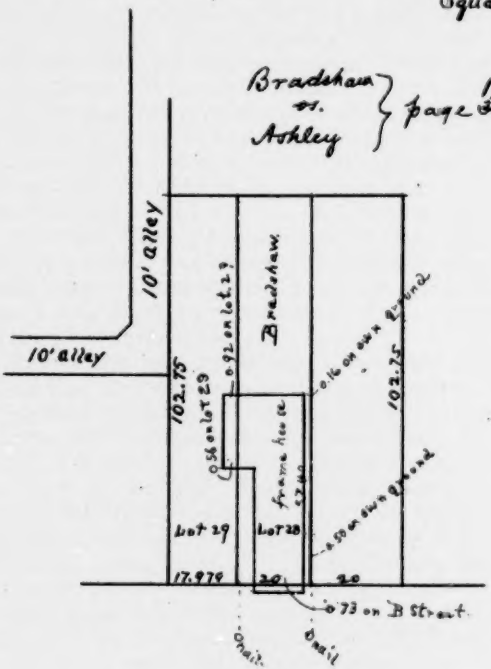
Ashley
} page 121 a



North B Street.

I hereby certify that the foregoing plat is correct in accordance with Law and Record. Actual survey made this 4 day of June, 1897, for Aaron Bradshaw.

Henry B. Looker, Asst. Surveyor
District of Columbia

street, south of her (witness); did not know Mr. Downs; knew Mrs. Downs by sight. Mrs. Downs lived in that neighborhood, and she (witness) thought a little further north; did not know Mrs. Downs before she (witness) left the neighborhood.

And after giving the aforesaid evidence defendant, by his counsel, offered and showed in evidence to the jury a plat made by the surveyor of the District of Columbia showing the actual present location of what is known as the Downs house as follows, to wit:

(Here follows diagram marked p. 121*a*.)

And after giving the aforesaid evidence the defendant to maintain the issue, offerred in evidence a series of deeds for the purpose of meeting the allegations that the defendant took possession of the *locus in quo* as a tresspasser. These deeds defendant proposes to offer as series of deeds from the heirs-at-law of George Walker, deducing the title by those deeds as to certain of the property to the defendant, and his entry was in good faith, and will follow his up by showing that the proper investigation as to the heirship was made; to which offer plaintiff, by his counsel, objected, and thereupon the court took the same under consideration.

And, to further maintain the issues joined on his part, defendant, by WALTER M. ACKER, gave testimony to the court and jury as follows:

That he is an attorney-at-law; that he knows the square 939 in controversy. His attention was called to the square October, 1893.

122 After giving the aforesaid testimony said witness was asked by defendant's counsel:

"Q. At that time what buildings were there on the square or in process of erection of the square?"

Which question counsel for plaintiff objected to, and after discussion counsel for defendant stated that he would withdraw it and ask another, whereupon plaintiff's counsel remarked that counsel for defendant shifts his position as frequently as their witness shifts the location of the houses; to which remarks counsel for the defendant excepted, and thereupon immediately the court said to the jury, That remark goes out.

And after the foregoing proceeding the said question was withdrawn and the following question asked the witness by the defendant's counsel, to wit:

"Q. Do you know whether any loan was granted on the security of the ink-numbered lots 1, 2, 3, and 20 (in the square 939) or any part of it prior to March, 1893?"

To which counsel for plaintiff objected on the ground that what the witness might know of the loan being granted would not be evidence, unless by granted is meant a loan already made and evidenced by some record.

And said objection was sustained by the court and exception taken, which was duly noted by the court on its minutes of the court before the jury retired.

And after the foregoing counsel for defendant said to the court he offerred to prove by this witness (Mr. Acker) that upon the face of this property, without notice of any claim now set up by the plaintiff, a loan was made on the security of a part of the property amounting to $20,000, and that with the proceeds of that loan six brick houses were built upon that square (939), on the 9th Street side of it, and on part of the property claimed in this suit.

Secondly, that he also expected to show by this witness that four of the lots are held by one man and were not so held at the time of filing these amended declarations, but only a portion of the property was held by the defendant and other portions were held by other persons, which would be further enlightened by the record proof which counsel for defendant have offered and the admission of which is under consideration by the court, namely, the Walker deeds and what follows from them.

Counsel for plaintiff objected to the admission to each part of said evidence, which the court sustained, stating that some of the testimony proffered was admissible; that when it was offered he would rule upon it, but for the present the proffer would be overruled.

Whereupon counsel for defendant excepted to ruling of the court; which exception was duly noted upon the minutes of the court before the jury retired.

And thereupon the court informed counsel it would proceed to dispose of the offer of the deeds offered by defendant
123 and requested counsel for defendant to repeat his offer; and thereupon counsel for defendant states to the court as follows, to wit:

That the ground on which he desires to offer the deeds is that during the progress of the trial the contention has been more than once set up that the defendant was an intruder or trespasser or intruder without any shadow of right to take possession of any part of the *locus in quo*, and, without going into defendant's title at all, denying the plaintiff has made out any case, defendant conceives himself to show that the defendant, in entering, did so under claim of right and not as a mere squatter or intruder, and for the purpose of showing the character of that entry the defendant offered these deeds, being a series of deeds connected by copious and explicit recitals with George Walker, who has been shown by the proof offered by the plaintiff (as defendant's counsel contends) to have been the original proprietor of the *locus in quo*, and defendant makes his offer for the purpose of deducing a chain of record title from those conveyances from George Walker's heirs, according to the recital, down to the time of the filing of the last amended declaration, or, if the court shall hold the defendant is limited only to the filing of the first amended declaration, then the defendant offers to make his proof come down to that period for the purpose of showing not only the character of the entry, but the facts in connection with

parole proof that the defendant was not in possession in 1893, when the first amendment was filed, of the *locus in quo*, then for the first time described.

And for the further purpose of showing, in connection with explanatory parole proof, that defendant was in possession at that date of only a small portion of the *locus in quo*, and that the remaining portions of it were held by other people, and that the offer is for a twofold purpose.

And, further, defendant proposes to show by these deeds and parole proof that when the amended declaration was filed in 1893 the situation as to possession had changed and the situation as to record title had changed, and that the property, *ink* number lot 1 and part of 2 and part of 20 (all in ink numbers), were held by one person, and that this property where the brick houses are was held by another person, and defendant refers now to ink numbers, lot 3 and part of lot 2; that one purpose of the offer is to raise the question that defendant in the amended declaration being still the same defendant, and, as he contends, there having been in the meantime a change of the possession which existed at the time when the original declaration was filed, with a limited description, the defendant is entitled to the benefit of that for the purpose of meeting the defendant's case that he (plaintiff) must make out—that is, at the time when the amended declaration of 1893 was filed—that the defendant Bradshaw was in possession of the whole *locus in quo*, either in actual occupancy of it or that he was the person to claim to own it.

And thereupon counsel for plaintiff stated to the court that defendant be allowed to proceed with all proofs he offers on the subject, subject to their right, when all is in, to move the court
124 to exclude it or any part of it, on the ground that it is not pertinent or that it is not sufficient to go to the jury, and with the understanding that the same are not offered to show proof of any title, but simply change of possession, and that recitals in these deeds constitute no evidence of title. Thereupon the court stated the defendant is endeavoring to connect it (title) with Walker, the original proprietor.

Counsel for plaintiff thereupon replied to the court, defendant will not undertake to show that the grantors in the deed are the heirs of Walker. He says there are recitals in the deeds to that effect.

Counsel for defendant further stated that the defendant would show what investigations had been made in England and what birth and marriage certificates had been found—everything the defendant has in that direction to show that this is a genuine contention of genuine heirship—and its sole purpose is, aside now from the question of the actual possession, to meet the assertion of counsel for plaintiff that defendant is a trespasser and intruder.

The court thereupon admitted the proof to go in, with leave to plaintiff's counsel subsequently to make a motion to strike out if they see proper.

Thereupon counsel for the defendant read in evidence to the court

and jury the division of said square 939 between George Walker the original proprietor, and the United States, as follows, to wit:

First. In the division between the original proprietors, George Walker and the United States commissioners, on the 13th day of October, 1792, lots 1, 2, 3, 10, 11, 12, 13, 14, 15, and 20 were to remain in George Walker and lots 4, 5, 6, 7, 8, 9, 16, 17, 18, and 19 were allot-ed to the United States to be sold agreeably to the deeds of trust concerning the lands in the said city of Washington.

And after the reading of the aforegoing instrument in evidence to the court and jury counsel for defendant also read in evidence to the court and jury deeds of conveyance, of which the following are abstracts, to wit:

Deed in fee from Margaret W. S. Chisholme, widow of John Jane Walker; Christiana W. Grahame *et vir*, Robert Grahame; Margaret S. Drummond (Viscountess Strathallan) *et vir*, James D. Drummond (Viscount Strathallen), and others (whose names are set forth in the deed, all of whom reside in various parts of Great Britain), sole heirs of James Walker, to John H. Walker, and conveys in fee all interest of the grantors as heirs (or otherwise) of George Walker, who was a brother of said James Walker, deceased, in and to original lots 1, 2, 3, 10, 11, 12, 13, 14, 15, and 20, in square 939, in the city of Washington, District of Columbia, with other lots and squares, and bears date 2nd August, 1889, and recorded in the land records of the District of Columbia on the 27th of September, 1889, in Liber 1423, folio 243.

Also deed of conveyance from Alexander F. W. Reddock *et ux.*, Emma Reddock, Marion Harnett, Janie A. Berry *et vir*, George Berry, and others (whose names are set forth in the deed, all
125 of whom reside in various parts of Great Britain), recites that George Walker, one of the original proprietors of the land in the District of Columbia, who was at the time of acquisition of said real estate and always thereafter until his death a citizen of the United Kingdom of Great Britain and Ireland, died seized of the real estate herein, unmarried, intestate, and without issue, leaving as his only heirs his brothers, James and Ralph Walker, and his sister, Helen Reddock, formerly Walker, all citizens of said kingdom; that said Helen Reddock, whose husband is deceased, died intestate, leaving as her only heirs her children, John, Alexander, Robert, Ralph, and Charles Reddock, all citizens of said kingdom, of whom said John, Alexander, and Robert Reddock died intestate, unmarried, and without issue; that said Ralph Walker, whose wife is now deceased, died intestate in 1852, leaving as his only heirs his children, Alexander F. W. Reddock, who married Emma Reddock; Marion Reddock (who first married William C. Bolton and second John Harnett, both now deceased), and Janet A. Reddock, who married George Berry, all alive and citizens of said United Kingdom; that Charles Reddock, whose wife is now deceased, died in 1855, intestate, leaving as his only heirs his children, Catharine Reddock, who married James Western and who is now deceased, intestate, and without issue, and Helen Reddock, a widow, who married Richard Edward Reed, now deceased, all citizens of said

kingdom; and the said grantors sell and convey to grantee, Walker, said original lots 1, 2, 3, and from 10 to 15, and lot 20, in square 939.

Said deed bearing date November 20, 1889, and recorded December 11, 1889, in Liber 1438, folio 470, of the land records of the District of Columbia, and after reading of the aforesaid deed counsel for defendant read to the court and jury deed in fee from George Goodyear and Richard Goodyear, heirs of Ralph Walker, to John H. Walter, dated 9th August, 1889, wherein they convey as heirs of George Walker, who was a brother of Ralph Walker, to said John Walter, original lots 1, 2, 3, 10, 11, 12, 13, 14, 15, and 20, in square 939 (among other lots and squares).

Said deed recorded October 27th, 1890, in Liber 1522, folio 473, of said land records, and after reading of which said deed counsel for defendant read in evidence to the court and jury a deed of conveyance.

And after reading the aforesaid deed counsel for defendant read in evidence to the court and jury a deed — fee from Jane Patrick (unmarried) to John H. Walker in fee. This deed recites the death of George Walker, a citizen of Great Britain and Ireland, unmarried, intestate, and without issue, leaving as his only heirs his brothers, James Walker, Ralph Walker, and Charles Walker (who died unmarried, intestate, and without issue), and his sister, Helen Reddock, formerly Walker, all citizens of said kingdom. The said Jane Patrick, a citizen of said kingdom, is a daughter of Mary Patrick, who was a daughter of Anna McKenzie, who was a daughter and one of the heirs of said Ralph Walker, deceased, who was a brother and one of the heirs of George Walker, and conveys
126 original lots 1, 2, 3 and from 10 to 15, inclusive, and lots 20, in square 939 (among other squares and lots), and it was recorded on 27th October, 1890, in Liber 1522, folio 477, one of the land records of the District of Columbia.

After reading of the aforesaid deed to the court and jury counsel for the defendant offered and read in evidence to the court and jury deed from John Patrick, unmarried, to John Walter, bearing date June 17, 1890, conveying in fee to Walter original lots 1, 2, 3, from 10 to 15, both inclusive, and lot 20, in square 939, in the city of Washington, District of Columbia (among other squares and lots), and recites same as in recitals in next above deed as to four collateral heirs, and further recites that grantor, John Patrick, is a son of one of the heirs of Mary McKenzie Patrick, deceased, who was a daughter of and one of the heirs of Ann Walker McKenzie, deceased, who was a daughter and one of the heirs of said Ralph Walker, deceased, who was a brother and one of the heirs of said George Walker. This deed is recorded on 27th of October, 1890, in Liber 1522, folio 477.

After reading in evidence to the jury the aforesaid deeds counsel for defendant offerred and read in evidence the deed of Margaret R. Walker, widow, and others (named in the deed), heirs-at-law of Ralph Walker, deceased, who was a brother and one of the heirs of said George Walker, to said John H. Walter, bearing date 28th

August, 1890, and conveys in fee to said Walter original lots 1, 2, 3, from 10 to 15, both inclusive, and lot 20, in square 939 (with other property), and is recorded October 27, 1890, in Liber 1522, folio 457, one of the land records of the District of Columbia.

After reading the aforesaid deed to the court and jury defendant's counsel read in evidence to the court and jury deed from James Dalziel, Junior (unmarried), to John H. Walter, dated November 4, 1890, conveying to said Walter in fee said original lots 1, 2, 3 and from 10 to 15, both inclusive, and lot 20, in square 939 (among other real estate), said deed reciting that he is one of the heirs of George Walker, deceased, and in what manner he is one of said heirs, and said deed is duly acknowledged and recorded in Liber 1544, folio 128, on the 11th December, 1890, one of the land records of the District of Columbia.

And after the reading to the court and jury the aforesaid deeds counsel for defendant offered and read in evidence the equity proceedings on equity side of this court, the papers and proceedings in said equity being No. 12676, docket 31, of John H. Walter against Ralph Walker and others (remaining heirs of George Walker) for sale to make partition of said original lots 1, 2, 3, 10, 11, 12, 13, 14, 15, and 20, in said square 939 (and other squares and lots), in Washington, District of Columbia; also the decree of sale appointed John Rideout trustee to make sale, and also the report of sale of said lots and final ratification of sale, &c., &c.

And after the same was read in evidence the counsel for defendant offered and read in evidence to the jury the deed of conveyance of said John Ridout, trustee aforesaid, in said equity cause, to John H. Walter in fee — said original lots 1, 2, 3, and 20, in square
127 939 (and other lots *in* squares), said deed bearing date March 12, 1891, recorded March 12, 1891, in Liber 1561, folio 334, of the land records of the District of Columbia.

And after reading of the aforesaid deeds to the court and jury counsel for the defendant offered and read in evidence to the court and jury deed of conveyance *to* John H. Walter to Mary E. Bradshaw, dated September 6, 1892, conveying to her in fee lots 40, 41, 42, 48, 49, 50, 51, 52, and 53, in square 939, as subdivided by John H. Walter and recorded in Book 19, page 47, in the surveyor's office of the District of Columbia, and recorded 12th September, 1892, in Liber 1723, folio 369, of the land records of the District of Columbia.

After reading the aforesaid deed to the court and jury counsel for defendant offered and read in evidence to the jury deed of conveyance in fee without any causes of warranty from Mary E. Bradshaw *et vir*, Aaron Bradshaw, to Lydia Hoagland, dated and acknowledged September 13, 1892, conveying lots 40, 41, 42, 48, 49, 50, 51, and 52, in square 939, as subdivided by John H. Walter in Book 19, page 47, of surveyor's office of the District of Columbia, said deed being recorded on 15th Septem*e*mber, 1892, in Liber 1726, folio 301, of the land records of said District of Columbia.

And counsel for the defendant also offered and read in evidence to the court and jury deeds of conveyance in fee dated September 14, 1892, acknowledged September 15, 1892, from said Lydia Hoag-

land to Leda M. Morse, conveying to her in fee without any clause of warranty said lots 41, 42, 48, 49, 50, 51, 52, and 53, in square 939, as subdivided by said John H. Walter and recorded October 30, 1893, in Book 19, page 48, of surveyor's office of the District of Columbia.

And counsel for defendant also read in evidence to the court and jury deed of conveyance from Leda M. Morse — defendant, Aaron Bradshaw, dated and acknowledged October 28, 1893, conveying to him in fee lots 48, 49, 50, 51, 52, and 53, in square 939, as subdivided by John H. Walter and recorded in Book 19, page 47, of the said surveyor's office; said deed was duly acknowledged and recorded on 30th October, 1893, in Liber 1860, folio 423, of the land records of the District of Columbia.

And counsel for defendant also offered and read in evidence to the court and jury memorandum of agreement between Margaret Walker Scott Chisholm and others, of the first part, and John H. Walter, of second part, and James Aitken, of the third part (which was submitted to the court in evidence, subject to a motion by counsel for defendants to strike out); which agreement is — the words and figures following:

Memorandum of agreement between Margaret Walker Scott Chisholm, widow of John Scott Chisholm, deceased, Jane Walker, unmarried, Christina Walker Grahame and Robert Grahame, her husband, Margaret Smythe Drummond, Viscountess Strathallen and James David Drummond, Viscount Strathallen, her hus-
128 band, Agnes Walker Boyle, widow of Alexander Boyle, deceased, Charles James Maxwell Lefroy and Elizabeth Catherine McClintock Lefroy, his wife, Clement George Lefroy, widower, and James Aitken, Russell Aitken, Henry Aitken, John Aitken, Robert Aitken, and Jessie Aitken, all unmarried, sole heirs-at-law of James Walker deceased, late merchant of Falkirk, Scotland, of *the first part;* J. Augustus Taylor and John H. Walter of the city of Washington, District of Columbia, United States of America of *the second part;* and James Aitken of Falkirk, Scotland of *the third part,*

Witnesseth:

Whereas the said heirs of the said James Walker being owners of certain interests in certain real estate in said District of Columbia, have arranged with second parties as after mentioned for converting said real estate into money

And whereas with the view thereto and to convert the interest of said first parties into personalty the first parties have by deed of even date herewith conveyed said real estate to the said John H. Walter who has by deed of trust conveyed the same to John Ridout and James Lowndes both of the city of Washington, District of Columbia, United States of America—in trust to secure the said J. Augustus Taylor a note for the sum of two hundred and fifty thousand dollars payable on or before five years after date without interest, renewable for another five years if at the expiry of the said period of five years there are suits depending in regard to recovery of said real estate. Which said note is subject to the provisions of this agreement as is endorsed thereon.

And whereas it is expressly understood and agreed that said note and deed of trust are in fact to stand as security only for the net proceeds of said sales after deducting the compensation after mentioned and the outlays after referred to.

And whereas the parties of the first part have selected James Aitken the party of the third part to be their attorney-in-fact for them and in their name to correspond with the said parties of the second part as to all matters and things proper and convenient to be done with reference to the recovery of the said property and the proceedings therefore and the accounting for all sales and recoveries contemplated under these presents and deeds granted and to be granted in connection therewith.

Now therefore it is hereby agreed between the first and second parties that the second parties shall receive the compensation after mentioned; that they are hereby invested with full discretionary powers to take possession sell and make due conveyance of said real estate at such times and places for such prices and on such terms as the second parties deem best and to negotiate with the parties (page 2nd) *parties* claiming or possessing said real estate, and to manage and develop the first parties' interest in said real estate and proceeds to their best judgment. The said second parties are to make all necessary advances and run all risks in connection with the raising and following out of the claims in connection with said real estate and to look for reimbursement thereof only from recoveries therefrom and they are to have no personal or other
129 claim against the first parties or any of them in connection therewith and shall bind themselves only in all actions or transactions connected with said estate and shall have no power or authority to bind the first or third parties in any way nor shall the second parties be entitled to use the first or third parties' names in any way so as to bind them either solely or in conjunction with the second parties or to use their names in lawsuits or otherwise.

The said J. Augustus Taylor may authorize the trustees acting for the time under said deed of trust to execute releases of said deed of trust upon his receipt of the sums realized from the subjects sold and to be released.

The gross proceeds of all sales are to be paid to the said J. Augustus Taylor who shall credit the same upon said note after deducting therefrom such sums as may have been necessarily paid by the said J. Augustus Taylor and John H. Walter in the purchasing of outstanding tax titles and tax certificates, and also to deduct as compensation for services rendered and to be rendered by himself and the said John H. Walter twenty-five per centum from the net recoveries upon deduction of the outlays above mentioned, which percentage on net recoveries the second parties have agreed to accept in full satisfaction of all the trouble risk and outlays in the premises other than such outlays as are above specially mentioned; and the second parties shall not be entitled to charge for any trouble they or any one in their employment may have in the premises nor shall they or either of them be entitled to employ in or out of court at the first parties' expense or pay at the first parties' expense or

deduct from the sums to be paid to the first parties any fees they may pay to any lawyer, solicitor, attorney-at-law, counsel-at-law, real-estate agent or broker, or for any copying or other work, all outlays work and trouble being undertaken and to be performed or paid for by the second parties themselves and to be covered by the commission of twenty-five per centum provided for; and it is understood and agreed that notwithstanding said sum of two hundred and fifty thousand dollars has been inserted in said note the sum for which the second parties shall be accountable shall be the sums actually recovered by them whether greater or less than said sum and for which recoveries the second parties shall be liable jointly and severally.

The said J. Augustus Taylor in doing all and any of the things necessary to convert the first parties' interest into money is required and undertakes so often as he shall find in his hands funds representing net proceeds of sales amounting to two thousand dollars to remit the same in manner after mentioned, it being expressly declared that it is the true intent and purpose of the said conveyance to the said John H. Walter and of this agreement to convert the said first parties' interest into personalty.

In the event of the death of the said John H. Walter his heirs shall be (page 3rd) bound at once to convey said real estate and claims to the party or parties named by the first and third parties, and failing their agreeing, to a party appointed by the court.

And it is understood that said second parties are to use all
130 due endeavor to prosecute all claims and recover for the first parties with all due despatch, and in the event of any undue delay occurring or the first parties being dissatisfied with the second parties' actings the first parties shall be entitled to call upon the said John H. Walter and the trustees under the deed of trust to convey to such parties as the first parties may direct, and on being required to do so the said John H. Walter and said trustees shall be bound so to convey said real estate and release said deed of trust and convey over said real estate to the parties to be named by the first parties; and the said second parties in prosecuting the claims shall not be entitled to select only such of these as they consider proper and most profitable but shall be bound to thoroughly attempt the working out of each and all of them, though it is expressly understood that the parties of the second part do not guarantee the recovery of any portion of said real estate, but bind themselves to make all due effort to recover all of said real estate; and to assist the first parties in judging of the progress made and actings of the second parties in the premises the second parties shall be bound periodically and at least every three months to furnish the said parties through the third party with a schedule showing the lots and their subdivisions—the present owners—estimated value of each—tax certificate standing against same—possession, if any, and information as to title and steps taken for recovery with probable result.

The said parties of the first part further by these presents do make constitute and appoint James Aitken of Falkirk, Scotland, to be

their true and lawful attorney-in-fact for them and in their names to correspond and make all necessary arrangements with the parties of the second part in and about the recovery of said estate in the District of Columbia aforesaid the property of the said James Walker the sale of such property as may be recovered, the accounting as to all moneys received from sales or otherwise in connection with said property, the compromising of any suits or the prices of any quitclaim deeds and generally for and in the names of the parties of the first part to do any and all things proper and convenient to be done with reference to the carrying out of this agreement, hereby ratifying and confirming all lawful acts to be done by their said attorney the said James Aitken of Falkirk, Scotland, which he may and shall do (page 4th) *do* in the premises.

In testimony whereof the parties of the first and second parts of this agreement have hereunto set their hands and affixed their seals this thirty-first day of January, one thousand, eight hundred and eighty-nine, and the said party of the third part has hereunto subscribed his name and seal in evidence of his acceptance of the duty and trust on him imposed by the terms of this agreement the same being executed in duplicate.

MARGARET WALKER SCOTT CHISHOLME.

Signed, sealed, and delivered in presence of—
HARRY D. WARNE, [SEAL.]
U. S. Consular Agent, Brighton, Eng.
SAMUEL WHITE,
Hurst-pierpont, Susscx, Insurance Agent.

131 The aforesaid agreement is signed and sealed by the persons named therein and acknowledged by them before F. H. Underwood, U. S. consul, Glasgow; Steven W. McKenzie, U. S. vice-consul, Dublin; Henry D. Warner, U. S. consul agent, Brighton; Thomas M. Waller, consul general of U. S., London, of Great Britain and Ireland.

According to the certificate of acknowledgement required by law for the conveyance of lands in the District of Columbia by grantors and their respective wives and husbands.

The said certificates of acknowledgement, by agreement of counsel, are hereby admitted from these exceptions, but the same may be shown and read to and considered by the court if deemed necessary and material.

And after reading of the aforesaid deeds and agreement counsel for the defendant offerred and read in evidence to the jury the deeds of release from James Lowndes and John Ridout to Mary F. Bradshaw, dated September 6, 1892, releasing and conveying to her in fee lots 40, 41, 42, 48, 49, 50, 51, 52, and 53, in square 939, as subdivided by John H. Walter, and recorded in Book 19, page 47, and reported September 12, 1892, in Liber 1723, folio 370, *and* the land records of the District of Columbia, of original lots 1, 2, 3, 10, 11, 12, 13, 14, 15, and 20, in square 939, mentioned in deeds of trust from John H. Walter to John Ridout and James Lowndes, herein-

before set forth and recorded respect*fully* in Libers 1423, 1438, and 1541.

The foregoing deeds from Margaret Chisholme and others to John H. Walter, from Alexander Ridout and others to same, from George Goodyear and others to same, from Jane Patrick to same, from John Patrick to same, from Margaret R. Walker and others to same, from James Dalziel, Junior, and others to same, from John Ridout, trustee, to same, from John H. Walter to John Ridout and James Lowndes, trustees (figure 3)—all purporting to convey one lot in square 864, three lots in square 893, five lots in square 895, six lots in square 916, lots 1, 2, 3, and from 10 to 15, inclusive, and lot 20, square 939; eight lots in square 962, five lots in square 964, all of square 966, seven lots in square 990, fourteen lots in square 1017, seven lots in square 1018, all of square 1025, four lots in square east of square 1025, nineteen lots in square 1043, one lot in square 1044, two lots in square 1046, one lot in square 1060, six lots in square 1061, and all estate in the District of Columbia in which grantors have any interest.

And the defendant, further to maintain the issue joined, by JAMES LOWNDES gave testimony to the jury tending to show and who testified as follows, to wit: That he is a member of the bar of this court; that he acted as agent and trustee of the representatives of George Walker and for James Walker.

That he made the acquaintance of a person claiming to be the heir of George Walker in 1879, think it was. She was an English lady. She was Miss Boyle. Ten years afterwards she wrote
132 him (witness) a letter from England; that he had the letter with him; that he had not seen the lady for ten years.

(Witness produced the letter), and thereupon it was agreed that the witness should state the substance of the letter to the jury, and thereupon the witness stated to the jury:

"The letter is dated the 4th of March (but I infer from my letter book that it was the 4th of March, 1889. That was an inference). The substance of the letter is that her mother had claims to land in Washington through her grandfather, and in the steps which are being made to realize this property it is necessary to have some one at Washington as trustee. She then says that I am the only person she knows in Washington, and she asks if I would act as trustee."

And after stating the matter aforesaid witness stated the lady's present name was Rothwell; that her maiden name was Boyle; that he could not recall her Christian name. The letter was signed C. Rothwell; that in response to that letter he said to her he would act as trustee. In the letters there is mention Viscount Strathallen; that Strathallen stated he was a cousin to the lady. His name was J. D. Drummond. He afterwards succeeded to his brother's title of Strathallen; that witness and Mr. Drummond were students together at the University of Gertenger. He (Drummond, Viscount Strathallen) is a grantor in the deed.

To the foregoing counsel for plaintiff objected; but, subject to his

exception, the court allowed the same to go to the jury to show the fact of Mr. Lowndes' acquaintance with a person of that name (Mr. Drummond) and the fact that he thereafter acquired title.

And after the foregoing proceedings the witness testified that the second letter had no date, and he could only infer that it was 1889, because soon after that the Walker deeds were executed; after that two or three deeds were executed; that he did not know the full name of the lady's mother; did not know her signature; knew her husband; did not remember her husband's name; that several deeds were executed, according to his memory, to Mr. Ridout and to him (witness) as trustees for persons professing to be heirs-at-law or successors in title of a certain George Walker and James Walker, conveying lands in the city of Washington to him and M. Ridout on certain trusts; that his (witness') duty under these trusts was to execute the deed upon satisfactory evidence to him that certain moneys had been paid J. Augustus Taylor, and that he (witness) had done; that the papers to which he referred were in forms of deeds of trust to himself and M. Ridout.

And after the foregoing testimony counsel for defendant offerr and read in evidence to the jury now, for the purpose of explaining the testimony of the witness (M. Lowndes), the deed of trust dated December 9, 1889, from John H. Walter (unmarried) to John Ridout and James Lowndes, conveying to them lots 1, 2, 3, 10, 11, 12, 13, 14, 15, and 20, in square 939 (and other real estate), in trust to secure the payment of his note to J. Augustus Taylor for
133 $100,000 five years after date or before, without interest, with power of sale in case of default of payment, &c.

Recorded December 11, 1889 in Liber 1438, folio 474, land records of the District of Columbia.

And also counsel for defendant offerred and read in evidence to the jury deed of trust from John H. Walter to John Ridout and James Lowndes dated September 23, 1889, conveying to them said original lots 1, 2, 3, 10, 11, 12, 13, 14, 15, and 20, in square 939 (among other squares and lots), in trust to secure J. Augustus Taylor $100,000, payable five years or before, without interest, said deed of trust being duly acknowledged and recorded September 27, 1889, in Liber 1423, folio 248, of the land records of said District of Columbia.

And after above counsel for defendant also offerred and read in evidence to the jury a deed of trust from John H. Walter (unmarried) to John Ridout and James Lowndes, dated October 22, 1890, conveying to them original lots 1, 2, 3, and from 10 to 15, both inclusive, and lot 20, in square 939 (and other squares and lots), in trust to secure the payment of $100,000 to J. Augustus Taylor on or before five years, without interest, and said deed is duly acknowledged and recorded on 27th October, 1890, in Liber 1541, folio 94, of the land records of the District of Columbia. Thereupon counsel for defendant closed their case.

At the time when the deeds from the Walker heirs to John Walter were offerred in evidence Mr. Ridout stated to the court in the pres-

ence of the jury that Walter had gone to England to get these deeds executed, and its sole purpose was, aside from the question of actual possession, to meet the assertion so constantly made in this case that we are mere trespassers and intruders. He also stated at the same time in response to a question by plaintiff's counsel that he would show where the real consideration was.

Thereupon the plaintiff gave to the jury the following evidence in rebuttal:

WILLIAM A. COOK.

I knew Charles H. Bliss, who was surveyor here in 1869; he is dead. I also knew Louis P. Hines in 1869; he, too, is dead.

(The witness was here shown the subdivision of square 939, on page 41, Liber C. H. B. of the surveyor's office.)

I know the handwriting of Mr. Hines, and in my opinion his signature as an attesting witness is genuine. I also knew William Morgan, who was an employee of the District government in 1869, and I know his signature. This signature here as an attesting witness, and also that of Mr. Chase, are genuine.

EDWARD H. EAKLE.

Mary F. Eakle, who has been a witness here, is my mother. Sarah C. Bradley is my aunt.

(The witness was here shown the subdivision above mentioned.)

134 I know the signature and handwiting of my mother and of my aunt, Mrs. Bradley, and their signatures here are genuine without any doubt.

MICHAEL J. GRIFFITH.

I have heretofore testified that I know the signature of John Carroll Brent.

(The witness was here shown the subdivision mentioned.)

The signatures on that subdivision, "John Carroll Brent" and "John Carroll Brent, trustee," are both the genuine signatures of John Carroll Brent.

Thereupon plaintiff's counsel offered in evidence said subdivision. The defendant's counsel objected on the ground that said subdivision does not include all the owners of the lot- in the square; that there are on it pencil numbers by which lot 15 was designated as 18, as it is in the ink numbers; because there is no seal of the surveyor; but the court overruled the objection; to which ruling defendant's counsel excepted, and the exception was duly noted upon the minutes of the court before the jury retired.

Said subdivision was then introduced in evidence by plaintiff's counsel. The following is a copy thereof:

(Here follows diagram marked p. 134*a*.)

JAMES A. ASHLEY recalled:

As to the deeds from myself and the plaintiff in this case and my sisters, Mrs. Beardsley and Mrs. Breckenridge, to Mr. Crow and Mrs. Finch and several other persons of the north lots in square 939, I addressed communications to the grantors which led to their signing the deed, as I requested. The persons who got those deeds dealt directly with me. None of the members of our family lived in the District of Columbia except myself. Two lived in Pennsylvania and one in the State of New York. No consideration was paid to the plaintiff in this case for these deeds or any of them. They were made simply as a matter of courtesy and to oblige a neighbor in the matter of accom-odation.

Cross-examination:

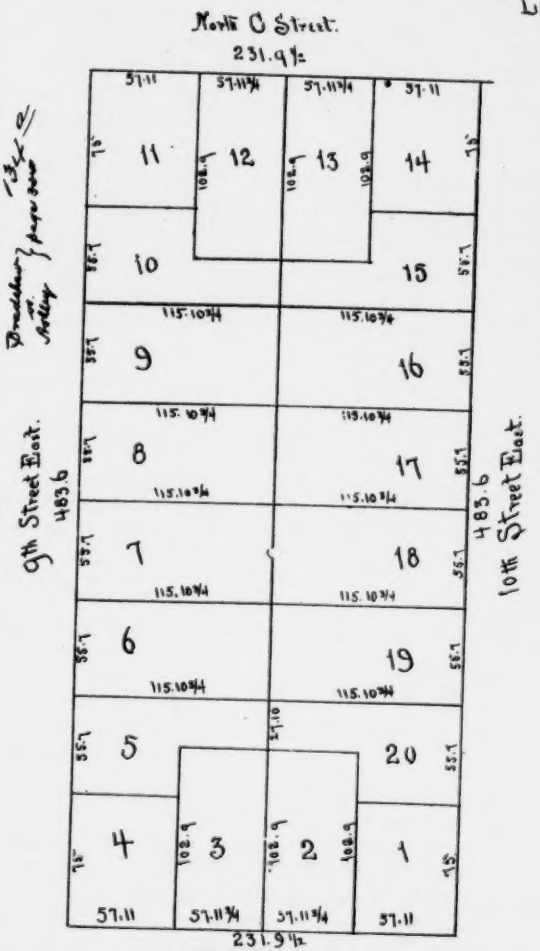
I acted as the agent of Mr. Nehemiah Ashley, among others, as I did in all these other matters. In the case of the deed to Crow, I dealt on the part of the grantee with Mr. Wolston. Mr. Wolston paid me altogether $16 in all the cases, including the Finch and Bridwell cases—all the cases, as I stated before. I never saw any of the grantees. I dealt with Mr. Wolston in all cases. He came first to my house, and the next morning to my office. At his request I corresponded with my associates concerning this matter, explaining what it was; that they wanted quitclaims to portions of the property along C street, as I remember—the two north-
135 ernmost ones—not the one next to 9th street, but I think the two above that. I spent the greater portion of that day in that correspondence. The Crow deed only was in question at first. A few days later the others were brought in. He called a second time, so that I had considerable correspondence, writing to three different cities and towns and explaining to my associates what was wanted. At the conclusion I ascertained what expenses they had been put to for execution, &c., and made a memorandum of the whole and included it in the bill. It amounted to $16 altogether. I don't know where Ida A. Finch or Clementina Bridwell are.

About the time of the purchase of this property claimed by the Ashleys by Joseph R. Ashley I know he had an abstract made, which I think was made by a man named Ward. I think it is in existence, and will produce it tomorrow, if I can find it.

HENRY F. BEARDSLEY recalled:

I think Ward's abstract, just referred to by Mr. Ashley, was with General Mussey when this suit was first started. Whether it is mislaid or not, I don't know; I hav-n't been over to Mrs. Mussey's to inquire. General Mussey is dead.

Brent and Others
Sub. Div. Square 939
Lots Nos. 1 to 20.



Surveyor's Office May 7, 1869.

I do hereby certify that I have examined the above Plat of Sub. Div. of Square No. Nine Hundred and Thirty Nine (939) and find the same correctly laid down from the records in my office.

Given under my hand and the seal of my office this 7th day of May, 1869.

Chas. H. Bliss
Surveyor, W. C.

This is to certify that we have subdivided orig: Lots Nos. 1 & 20, both inclusive in Square No Nine Hundred and Thirty Nine (939), of which we are the proprietors, into the lots as laid down in the above Plat, and designated as Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 & 20, both inclusive.

Washington City, D.C., May 7, 1869.

Witnesses: William Morgan, William B. Chase

Witness: Lewis P. Himes, S. B. Chapin

Mary Baldwin Seal
Sarah C. Bradley Seal
Mary F. Gable Seal
John Carroll Brent, Trustee Seal
John Carroll Brent Seal
Winifred Lee Smith Seal
Eugene Bowen Seal
as to ..... William J. Smith Seal

MORRIS A. DOWNS recalled:

As to the testimony in this case about loads of sand and stone being piled on the corner lot of 9th and B streets—the southwest corner of square 939—about the time that our house was moved over on lot 2, nothing at all has been on that lot since the time our house was moved until it was fenced in by Mr. Bradshaw. I have lived there all the time. I am 22 years old and was seven years old when our house was moved.

JAMES A. ASHLEY recalled:

I have here the letter which I wrote to my relatives asking for a deed to the Crow lot and explaining the matter to them the day after Mr. Wolston saw me. That is the letter upon which Nehemiah Ashley and the others executed the first deed and sent it to me.

Said letter was thereupon offered in evidence by plaintiff's counsel, objected to in behalf of the defendant, and excluded by the court.

JOHN RIDOUT.

I know the defendant, Aaron Bradshaw. He has been in attendance here every day during this trial and is here now. I know John H. Walter, who was a grantee in certain deeds offered here yesterday and grantor in some of them. He is living in this city. I saw him last just before the adjournment of the court; just before the adjournment of the court yesterday. I think he was here in this room. I do not know Lydia Hoagland. I had no personal acquaintance with her, though I had heard of her existance through Walter. I think, but am not certain, I heard Miss Morse speak of her. Miss Morse was a clerk in Mr. Walter's office—Leda M. Morse—she was his typewriter. She was married about a
136 year or a year and a half ago, I think. I have not seen her since. I do not know her married name and do not know whether she was here last week.

Counsel for defendant, after his examination as a witness was concluded, moved to strike out all his testimony on the ground that to ascertain the actual situation of affairs on the property the proper proof is by witnesses who know of it and not by testimony for the purpose of professedly ascertaining the identity of certain parties to certain deeds which are in evidence.

Thereupon plaintiff's counsel addressed the following remarks to the court in the presence and hearing of the jury:

"It is not merely to ascertain their identity, but to show that the deeds were drawn and put upon record just to make cloud on the title, and not for any honest purpose of transferring title.

Let me again remind your honor of what the situation was here when we closed our case. My brother announced that he did not intend to prove any title in this land on behalf of the defendant. He said that he was going to offer a lot of deeds for the purpose of showing that this thing which we had so often reiterated here, and

which in fact the laws says that they were tresspassers unless they showed a title, was not true, and that although they had no title they had good reason to suppose they had one, and therefore did not go in there wrongfully and were not tresspassers, and for that reason, and for that reason only, they have obtained and produced every one of these deeds, from the beginning down to those people who purport to be the heirs of George Walker in the deed which was acknowledged in August, 1889, down to the last one.

"There is not one of them which has any connection with Bradshaw except the one which puts the title in him. And why is it they have put those in? Because we have shown that Bradshaw is the agent, the tool, or something, of Walter, and went in under him. That is our case, and for the purpose of meeting that case they have put in a lot of deeds which, they say, might have given Walter, and therefore Bradshaw, who is acting for him, the right to suppose that he had some claim to that property, and Bradshaw therefore went into possession of it under such supposed claim, which they now admit they cannot establish. Now, my friend says that we are not allowed, in response to that set of deeds, to put in the facts, which, if this were a creditor's bill filed to set them aside, would satisfy anybody that they were fraudulent, and that the title was still where it was originally.

Have they not introduced here themselves, your honor, the fact that, immediately these titles were put in Walter, there were executed three deeds to James Lowndes and John Ridout, each purporting to secure the sum of $100,000 to one J. Augustus Taylor, payable five years after date or before, without interest, Taylor being Walter's partner under that contract? Does not that, your honor, in connection with the facts which appear upon these deeds themselves—that Lydia Hoagland did not have the title except to pass it out of her, and that Leda Morse, her grantee, passed the title *the title* out of her before she recorded her deed—do not all these facts, in connection with the facts that they do not undertake to maintain their deed, in connection with the fact that they have not put Bradshaw on the stand to show they believe he had any title, in face of the fact that they dare not bring Walter here that we may get at the transactions under which these deeds originated and show the whole scheme of fraud here openly and publicly—do not these facts altogether tend, your honor, to meet the claim that this possession was an honest one?

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* * * * * * *

And yet, when they come to their case, contesting us at every inch about where this fence or that ditch was for the purpose of showing that, although they had deeds, they had not possession. As soon as we come to their rotten row of deeds they say possession is presumed."

Defendant's counsel excepted to so much of the foregoing remarks of the plaintiff's counsel as indicating that the purpose of the plaintiff's counsel in offering Mr. Ridout's testimony was to show that the deeds were drawn and put upon record just to make cloud

upon the title and not with any honest purpose of transferring title, and said exception was duly noted upon the minutes of the court before the jury retired.

Counsel for the defendant also entered an exception to remark of plaintiff's counsel that Bradshaw was the tool of Walter, and that these were a "rotten row of deeds," on the ground that it was not mere argument of the case, whether addressed to the court or jury, and on the further ground that the question as to whether such relations existed and such character attends those deeds is a question of fact for the jury, if it be admissible at all, and that such expressions are utterly inadmissible under the circumstances under which they were uttered.

Said exception was duly entered upon the minutes of the court before the jury retired.

The court declined to strike out the testimony of the witness Ridout; whereupon counsel for defendant reserved an exception, which was duly entered upon the minutes of the court before the jury retired.

NICHOLAS JONES.

I lived on the square between 9th and 10th and B and C streets N. E. and paid rent to Mrs. Baldwin. My house was in front of 9th and a little ways from B street. The Half-way house was within twenty feet of my house. I staid there three years. I am seventy-two years old, I guess.

Cross-examination:

I last saw that square yesterday. I went there by myself; nobody told me to go. I look at it every time I pass. Since I was up
138 here at court the last time I have had no talk with anybody whatever about this case. I had no written paper from Mrs. Baldwin; she wouldn't give me any. I don't know anything about old man Baldwin. I reckon he was dead.

Thereupon plaintiff's counsel stated that in so far as the last witness is concerned the record will show that he was subpœnied last night.

ELLA T. DOWNS recalled:

Mr. Bradshaw has got all kinds of old fences and pieces of brush and lumber on the lot at the N. E. corner of 9th and B streets N. E. Before he fenced the place in I never saw any sand or stones piled there; it was a vacant lot. This material is all in the lot that he has fenced in now. There is a 17-foot lot between that and our house. This material is all over the lot. He had the street-sweepers to put all the dumping in there they would sweep from the streets.

Cross-examination:

Mr. Bradshaw used to sell the stuff that was in there—the brush and lumber and things that were in there. I saw Mr. Bradshaw in

there the whole time that he was putting up the wire fence. I was personally acquainted with him then. I am acquainted with Mr. Hughes. I don't remember Hughes putting sand or anything else there at that corner.

ELLEN F. DOWNS recalled:

I never saw any sand or stone stored at the corner of 9th and B before the wire fence was put there; it was a vacant lot. It was vacant after the Half-way house was moved and after our house was moved—after we sold to Mr. Ashley and moved the house from lot 3 to lot 2 it remained vacant and they played ball on it.

I have lived there ever since 1868. There are windows on the west side of our house; that is why we could see so much. After the wire fence was put up they put things in there, but there was not much put in until the big fence was put up that is up now, and then he would buy old houses and bring in shutters and windows. He has got them there yet—some of them. As to who put them there, Mr. Bradshaw had a man working for him by the name of McIntyre. I saw him hauling some of the things. I saw Mr. Bradshaw last week, in his shirt sleeves, taking some lumber away. As to whether from the first time I saw Mr. Bradshaw's man storing that material there it was ever all taken away—there is some there yet. It has been there all along and is there still, some of it. From the time the fence was put up I have seen him in and about the place always.

By the COURT:

I remember when this fence went up in the spring of 1890. For the three years thereafter material was deposited there by Mr. Bradshaw. I saw him.

139 "Q. Listen to me, madam. I am asking you now about three years beginning in the spring of 1890.

"A. Oh, I think it is longer than that.

"Q. Never mind since that, but up to that time, for three years after the fence was put up, did Mr. Bradshaw put material there and take it away, to your knowledge?

"A. He has taken it away, but he hasn't put so much there since they objected to his hauling——

"Q. You are talking about yesterday, and I am talking about three years ago.

"A. I am talking about that.

"Q. How was it three years ago; not now, but three years ago?

"A. Well, there was windows and shutters.

"Q. Four years ago?

"A. Yes, sir."

Direct examination resumed by plaintiff's counsel:

It was not a very long time after the brick house went up before they put the board fence up; it might have been a year.

Thereupon counsel for the defendant moved the court to strike out all the testimony of this witness on the ground that if proper at all it should have been introduced in chief and is not proper in rebuttal.

The court ruled that the testimony was competent so far as it related to possession of the premises in controversy down to the time the amended declaration was filed, but that evidence relating to possession after that time was incompetent and was excluded. To the ruling of the court refusing to strike out all the testimony of the witness in rebuttal the defendant excepted, and the exception was duly noted upon the minutes of the court before the jury retired.

MORRIS A. DOWNS recalled:

It was something within a year after the little brick house was built before the board fence was put up.

The testimony of this witness was objected to by counsel for the defendant on the same ground as that of his mother, Mrs. Downs. The court overruled the objection, and counsel for the defendant reserved an exception, which was duly noted upon the minutes of the court before the jury retired.

Thereupon the plaintiff's counsel produced the Ward abstract of title hereinabove referred to, and it was admitted by respective counsel that the main paper was in the handwriting of William A. Ward, and that the genuine signature of William H. Ward was at the bottom.

Plaintiff's counsel stated in response to an inquiry by the court that they wanted this abstract to go in evidence. The court then asked defendant's counsel if they objected, and they replied that they did object to that for any purpose except so far as they may be concluded from what they said yesterday.

140 Plaintiff's counsel stated that they offered the abstract to show that there was an investigation of title and a purchase and good faith by the Ashleys.

But the court excluded the paper.

Thereupon counsel on both sides announced the testimony closed. This was all the evidence in the case.

At this point, during the discussion between counsel, the plaintiff's counsel remarked that prior to the trespass no taxes had been paid on the property in controversy on behalf of Walter or Bradshaw, and none since on the information which plaintiff's counsel had, except one. Counsel for defendant offered to prove by Mr. Acker that the taxes have been paid on behalf of the encumbrancer on these brick houses.

Thereupon the court remarked, "You have closed your case several times."

Thereupon defendant's counsel stated that they offerred to prove by Mr. Acker who had paid the taxes on the property improved by these brick houses since the filing of the first and second amended declarations.

But the court excluded the evidence, and counsel for defendant entered an exception, which was duly noted upon the minutes of the court before the jury retired.

Thereupon counsel for defendant moved the court to strike from the record in this cause all testimony offered by the plaintiff in relation to the pencil numbers or tending to show conveyances by or possession with reference to pencil numbers; but the court refused to grant said motion; to which ruling the defendant then and there duly excepted; which exception was duly noted on the minutes of the court before the jury retired.

Thereupon the plaintiff's counsel asked the court to instruct the jury as follows:

If the jury believe from the evidence that Morris Downs took possession, in 1868, of the lot referred to in the testimony as pencil number 3, fronting on B street, under his purchase of lot 3 from John Carroll Brent; that he held and occupied said lot as a place of residence for himself and his family exclusively, claiming it as his own, until his conveyance of the same to the plaintiff and his cograntees in 1881; that he paid rent therefor to the plaintiff and his cograntees until 1882, and that since said last-mentioned date and until the defendant entered thereon, if the jury find from the evidence that he did so enter, the plaintiff and his cograntees continued to exercise acts of exclusive ownership over the said lot, to pay taxes thereon, and to claim title thereto, and that they had never abandoned the same nor their claims to be owners thereon; and if they further find from the evidence that Tyler Baldwin and those claiming under him were in actual exclusive possession of the lots referred to in the evidence as pencil numbers 4, 5, and 6, cultivating and paying taxes thereon and claiming them as their own from the time of his purchase of lots 4, 5, 6, and others from the United States in 1851 until some time during the war, and that thereafter those
141 claiming under him continued to claim exclusive title thereto, pay the taxes thereon, renting the same or parts thereof from time to time, sold sods therefrom, and gave their tenants permission to pasture cows thereon, and that the right os pasturage so given was actually exercised by said tenants down to about the time the defendant entered upon said lots, if the jury find from the evidence that he did so enter, and that the plaintiff and others claiming under the said Baldwin have never abandoned the said lots nor their claim to be the owners thereof; and if the jury further believe from the evidence that the defendant, Aaron Bradshaw, in or about the month of March, 1889, without the knowledge or consent of the plaintiff and others claiming under the said Downs and Baldwin, entered upon the lots known as pencil numbers 3, 4, 5, and 6 and enclosed them with a fence; that he was in possession of all of said lots on the 13th day of October, 1891, when the original declaration in this cause was filed, and that he continued in possession of all of said lots until March 11, 1893, when the first amended declaration was filed and subsequently; and if the jury further believe from the evidence that Joseph R. Ashley, the grantee in the

deed from Christopher Engle and Mary Baldwin, died intestate in 1875, and that he left as his only heirs-at-law two sisters and three brothers, of whom the plaintiff is one, then their verdict should be in favor of the plaintiff for the undivided parts of the lots in controversy claimed by him in the declaration.

And after the submission of the said prayer counsel for defendant prayed the court to instruct the jury as follows:

Defendant's Prayer.

1. The jury are instructed, as matter of law, that on the division between the original proprietor and public of square numbered 939, in the city of Washington, District of Columbia, the ink-numbered lots numbered 1, 2, 3, and 20, and others in said square, were allotted to George Walker, the original proprietor, and the ink-numbered lots 4, 5, 6, 7, 8, and 9, and others were allotted to the United States, and that their verdict in this case should be in favor of the defendant.

2. The jury are instructed as matter of law that all the conveyances and proceedings offered in evidence by the plaintiff in this cause for the purpose of deducing title from the United States to William T. Baldwin related to and conveyed the ink-numbered lots 4, 5, 6, 7, 8, and 9, and others, in square numbered 939, in the city of Washington, District of Columbia, and did not refer to nor convey what have been designated in this case as the pencil-numbered lots numbered 4, 5, 6, 7, 8, and 9, and others, in said square, and that their verdict should be in favor of the defendant.

3. The jury are instructed that there is no evidence in this cause which it is competent for them to consider tending to show that either the allotment on the division between the public and the original proprietor, the deed from the commissioner of public
142 buildings to William T. Baldwin, offered in evidence by the plaintiff in this cause, or any other conveyance or proceeding offered in evidence by the plaintiff for the purpose of deducing title from the United States to William T. Baldwin for lots numbered 4, 5, 6, 7, 8, and 9, in square numbered 939, referred to or conveyed by pencil numbers, as the same appear on the original certificate of division of said square or the record of such certificate, and that their verdict should be in favor of the defendant.

4. The jury are instructed that upon the whole evidence upon the issue of title by adverse possession their verdict as to the ink-numbered lots 1, 2, and 3, in square numbered 939, should be in favor of the defendant.

5. The jury are instructed that upon the whole evidence upon the issue of title by adverse possession their verdict as to ink-numbered lots 20, in square numbered 939, should be in favor of the defendant.

6. The jury are instructed upon all the evidence in this cause their verdict should be in favor of the defendant as to the ink-numbered lots 1, 2, and 3, in square numbered 939.

7. The jury are instructed that upon all the evidence in this

cause their verdict should be in favor of the defendant as to the ink-numbered lot 20, in square 939.

8. The jury are instructed that upon all the evidence in this case their verdict should be in favor of the defendant.

Which instruction asked by the plaintiff's counsel was granted by the court, and all the instructions asked by said defendant's counsel were refused.

Whereupon the defendant's counsel objected to the granting of the instruction asked by the plaintiff's counsel and separately objected to the refusal to grant each of the instructions asked by the defendant's counsel; all which objections of defendant's counsel being overruled, and thereupon the defendant, by his counsel, separately excepted to each of the aforesaid rulings of the court, giving the plaintiff's and refusing to give the defendant's instructions.

Thereupon counsel for the plaintiff proceeded to argue the case to the jury, and at the beginning of his argument, upon objection by defendant's counsel to one of his remarks, he said:

"I agree that you may except to everything that I say."

In the course of his argument plaintiff's counsel stated that George Walker had left the country and abandoned the land early in the history of the city of Washington, leaving to others the duty of paying taxes and responding to obligations of that nature; that, as the evidence showed, every person who bought or improved these lots, had bought and improved in accordance with what were called the pencil numbers until within a few years last passed, when Walter, having in some way learned of the ambiguity, had gone to England and obtained a champertous agreement which had been produced at the trial, evidently for the purpose of stealing this land; to which remark of counsel objection was made by counsel for the
143 defendant; whereupon the remark was withdrawn by the counsel who made it. Thereafter, in the course of the argument on behalf of the plaintiff, counsel for the defendant referred again to the remark in question and noted an exception thereto after it had been withdrawn.

Thereupon counsel for the defendant further excepted to the remark of the counsel for the plaintiff in argument that the said George Walker had left the country and abandoned the land.

In the further argument of the case the said counsel for the plaintiff used language as follows:

"A class of men whom one witness aptly described as land-snatchers."

Thereupon the following colloquy ensued:

Mr. RIDOUT: Let it be understood that I object to all this class of remarks.

Mr. DARLINGTON: I agreed to that at the beginning.

The COURT: The court must assume that gentlemen at the bar will not say anything that they do not think right to say. Nevertheless, the court may decide whether it is proper that certain things may be said.

Mr. RIDOUT: Your honor struck from the record the very testimony upon which the gentleman is now commenting. I say that justifies my contention.

The COURT: That is right.

Mr. DARLINGTON: I think, in view of this champertous agreement, we have the right to say that they are land-snatchers.

Mr. WORTHINGTON: I want to know whether it is the ruling of the court that, in arguing to the jury upon the evidence, I am not to be permitted to say that there was a dishonest and collusive agreement to take land for which they had no right and put up deeds which were pretended deeds?

The COURT: This appears to be based upon an agreement that the court has never seen.

Mr. WORTHINGTON: We base it upon the question whether there was an honest consideration; upon the fact of deeds being made to a typewriter and kept off the record until the title had passed, as well as upon a hundred other things in this case. If your honor rules that we are not at liberty to argue that there was a conspiracy to get land by means of pretended deeds, to make it appear that they had title when they had no title, in order to blackmail these land-owners and get paid for something to which they had not title, we shall feel under the necessity of reserving an exception.

The COURT: I do not think that in this case there has been enough evidence to warrant the court in permitting statements in that line when challenged by the other side. The proposition presented to the court, upon which the case goes to the jury, and upon which, after all, I think it had best be argued, is whether or no, if they find possession under certain circumstances of continuity, the plaintiff is entitled to recover. I think the case had better be argued mainly in that line. If counsel feel warranted in disagreeing with that view they can take their exceptions. It is the desire of
144 the court that propositions as to blackmail and fraud in procuring a series of deeds and snatching property shall not be argued. Counsel may have great liberty in argument, but I think the case has been properly placed upon the propositions presented by the prayers. If you are damnified you had better take an exception.

Mr. WORTHINGTON: We take an exception.

Thereupon the opening argument for the plaintiff was concluded and the defendant's counsel replied. In the closing argument for the plaintiff the following remarks were made and exceptions taken:

May it please your honor and you, gentlemen of the jury, I never undertook the argument of a case under such difficulty as at the present moment. There are so many things I intended to say in this case and which I think ought to be said, but which his honor thinks are not necessary or pertinent, that I shall have very great difficulty in keeping myself within proper bounds. Without any disrespect to his honor, I feel as though I were talking to you

with a gag in my mouth; but I think when I explain to you a little more fully, and as his honor will hereafter explain to you, just the position of the case, you will understand why it is that his honor does not think it competent or proper now to go into these other matters. The issue has been narrowed down so that there is no occasion for enquiring into anything except the mere fact whether the plaintiff and those from whom he derives title have been in continuous possession of the land, never abandoning it; and that is all there is to it.

That grows out of this state of facts: If you come down to the court-house from your home or wherever you happen to live, and upon going back you find that some man has walked in and taken possession of your house, not having any honest claim upon it, but just going in as a tresspasser and wrongdoer, you have two remedies you may pursue. One of them, which I take it the most of you would exercise, would be to take him by the neck and kick him out of doors, and if he resisted you would be entitled to use all the force necessary to put him out. The other remedy would be to come to court and secure a writ of ejectment to be served upon him, and to maintain your case under such circumstances all you would have to do would be to show that you were in possession before his entrance with a claim of title, a claim that it was your property; then, if he cannot show any better title, the law will eject him.

When we began this case, as you took note, we were anxious to know what was going to be the contention of the other side. We wanted to know whether they were going to stand as such a tresspasser, as I have described, without honest pretense of right, or whether they had some title which they expected to set up and which would be required to be submitted to the jury. You will remember that when my brother Mattingly got through with his opening statement and had told you a number of things which they expected to prove and was about to take his seat, I said to
145 him, "What about your title here?" And he would not tell you; not a word. You gentlemen have sat here for four weeks and did not know, as we did not know, that they did not pretend to have title.

Mr. RIDOUT: I want to reserve an exception to that remark.

The COURT: Yes; an exception to that remark.

Mr. WORTHINGTON: If we had known at the outset of the trial what our friends would not then tell us and what we found out only a day or two ago, under the circumstances I have named, this case could have been tried in one day. But no. We did not know but that they might set up some honest claim of title. They might have some proof that these people who executed these deeds were George Walker's heirs, and so we spent four weeks here proving title all through.

What took place while you were out of the court-room yesterday and the ruling of his honor this morning mean just this: That all we have to suggest to you now is that we were in honest possession of the property some years before they jumped upon it and enclosed it with a wire fence.

Mr. RIDOUT: We except to that last remark.

The COURT: Yes.

Mr. WORTHINGTON: That we were in possession, claiming to own it, not that we owned it, and if you find that Baldwin and Downs and those under whom they claim were in 1869 in possession of the lots named, and that their title whatever it was, was good, and that there had been no abandonment, but that that title has come down to us, then we should have the verdict. So it is not necessary to talk about a lot of other matters or about other property. All I have got to satisfy you of is, in the first place, that Baldwin was in possession in the '50's of lots 4, 5, and 6, claiming to own them, and that Downs was in possession of lot 3 some times in the '60's, claiming to own that, and that since then the possession has not been abandoned—that is, that we have not given up the property. They may have let the fences go down; we may have sat by and let it be turned out to commons, but if we have kept up possession by the payment of taxes we are entitled to the property for the same reason that you would be entitled to recover possession of your house if you found a man named Walter or Bradshaw had camped on it and told you to go to law about it if you wanted your property.

Mr. RIDOUT: To that we except.

The COURT: Yes.

Mr. WORTHINGTON: You will perceive that the question whether the pencil numbers or the ink numbers are the proper numbers has become almost an unimportant question in this case. All we have got to show you is that Baldwin took possession of lots 4, 5, and 6 and occupied them after he got them from the Government in 1851, honestly believing that lots 4, 5, and 6 were in his deed, and if he held possession, then we are entitled to recover, if there had not been abandonment since, and there is no pretense of that.

146 There was a division made of the original lots in the square, as shown on the certificate of division in evidence, but that simply says that so and so went to the Government and so and so went to Walker. That, however, does not help us as to which lots were meant, and so you had to wait until something was done to show whether the ink or pencil numbers were meant. If you take the ink numbers, they are different from all the other squares in the city; there is not another rectangular square in the city that has the lots numbered like this.

So you find that every act done by the city or the land-owners was done with reference to the pencil-numbered lots. Now, I am going back to speak of what Baldwin got from the Government in 1851. He got a conveyance giving him lots 4, 5, 6, 7, 8, and 9. You perceive at once that if he had the ink numbers he would have lost the title by adverse possession, if that could run against the Government, because at that time the Lowes had been in possession all around the north end of the square for 20 years; but he takes his lots 4, 5, 6, 7, 8, and 9, and all you have to determine on this point is that he believed those were his lots. If they

had proved any title we should have had to prove they were his lots.

Mr. RIDOUT: You unintentionally fall into error there.

Mr. WORTHINGTON: No; I do not.

Mr. RIDOUT: We say he got lots 4 to 9 up here.

Mr. WORTHINGTON: I do not know what you are talking about. If he got lots 4 to 9 would he not have got those six?

Mr. RIDOUT: That is where the Gypsey house was.

Mr. WORTHINGTON: That is there, and they had possession of it for thirty years.

Mr. RIDOUT: Where is the proof of it?

Mr. WORTHINGTON: By dozens of people; by several of your own witnesses, more's the pity. You see there is no question about Baldwin being in possession. Mr. Ridout has been making an argument that the Baldwins had possession of these lots and trying to make some sort of argument; but the Brents always claimed the pencil numbers and ever claimed those around there. The Brents from beginning to end regarded lot 18 as being there and lot 1 as being here; but I am not going to spend time talking to you about the argument.

I refer you to one thing that happened early in this case. You remember when Mrs. Bowden was upon the stand she told about her father having put that post-and-rail fence there, and she said he put it up when he bought the lots. My friends thought that we claimed that it was before that. You remember how they exulted over the fact that she said her father built that fence after he got the property in 1851, and how they almost shouted with gladness when she said, "Why, yes, my father brought the timber that built that fence from our farm out here." Now, they have been trying for three weeks to show you that there was never any fence there at all. I wish I had time to go over the testimony about that square. I have a little memorandum of the mistakes made in this case
147 that I am going to hang up in my house. I find, in the first place, that that Gypsey house was down on B street; next, over here on the west side of 9th street; next, that it never was built until after Downs built his house, and, lastly, I find that it was never there at all. Well, that confused me a little, but I thought I would strike for the Half-way house, and the first thing was a man who said that it was not there during the war at all. That was a man who played all over that ground every day during the war. Then there was this German lady, who lived right there and who told you that from the time of the first battle of Bull Run down to the end of the war in 1865 there was not a house there of any kind the whole time. If she had been looking across the street she would have declared she found nothing but the circumambient horizon. Then there was a man who said it never was there during the war; but the Half-way house is still there. A witness on the stand said he passed by there and saw it yesterday. You remember that. I never did see such a complication; but then I thought I would go for the Downs house. Everybody knows Downs, but one witness says there was no Downs house during the

war. Then there was another witness, who said he passed by there every day and said he never saw it until 1870, and so it goes. Then I fell back on the shanties. Perhaps these poor little shanties will have to be allowed to have some sort of existence at some time. You know just as well as that you are sitting here that after the war began, early in the war, when the fences were down, colored people settled on there, perhaps half a dozen, paying rent to Mrs. Baldwin, and some continued on there until 1881, when the Ashley collected the rent.

First comes a — here who tells you he went to the Mexican war. If my memory is not wrong that was in 1847 and 1848. When he came back from the city of Mexico with flying colors, lo and behold, there the shanties were in 1848. Then there were two or three witnesses who had known that square from the year one, and there never were any shanties on that square. Then, there were other people who told you they were there, but were taken down in five or six years. I remember one witness testifying that there were a few shanties put up there early in the war, but they only staid there five or six years, and another witness says there have been no shanties there since 1870. This is what the different witnesses say about those shanties. They are too much for me. Then you will remember one witness who said that the only house on 10th street below C street was removed; he could not read at all, but he saw one great big house on 10th street, and what it was we will have to find out afterwards. There is one other witness, and that is our friend Shaw, the paper man, who lived away down here at the end of New Jersey avenue somewhere, near the Eastern branch, as near as I could make out, and who was busy at his trade all the warm weather, but in winter he would not be occupied, and strolled around, and sometimes he strolled into this swamp; and what did he see?

The only thing he could remember was the beautiful cher-
148 ries. Cherries don't grow in the winter time now. I think perhaps I might enjoy by proxy his swallowing cherries, for his mouth watered, and he went there three or four times a week in the winter. That is Mr. Shaw. I wonder where my friend found his witnesses.

If you are not satisfied with *one* evidence and with the miserable failure to rebut it, that Mr. Baldwin held possession of lots 4, 5, and 6, claiming to own them, and from that time down there has been a claim of ownership exercised by paying taxes and by pasturing cows, then you will not be satisfied by anything whatever. What I mean by that is that there would not be any evidence that could satisfy you, if that does not.

So much for lots 4, 5, and 6.

Now, here is lot 3. That is a horse of another color. That is the lot which went to Walker. I think I may say that went to Walker without offending the sensibilities of my friend. When Brent got the title to all the Walker lots he got the title to them, whether it was ink lot number 20 or pencil lot number 3, because he got everything that Walker had. You find that Mr. William Brent in 1844 makes a deed conveying lot 3 to John Carroll Brent,

and it is a curious fact that there are only three deeds of that lot in the first hundred years almost of the existence of this city—first, the tax deed to William Brent in 1822, then the deed from William Brent to John Carroll Brent in 1844, and then from John Carroll Brent to Downs in 1868.

You will remember that Mr. Downs was then and had been for two years in the occupation of the Half-way house on the corner, and here the fact is developed by some of their witnesses that when he built his house he got a little over on lot 4. His house is indicated there by that coloring and was built on lot 3. My brother Ridout says if we are going to give you that property we are only going to give you the land the house was on. The court will tell you that possession is the first thing. Mrs. Jones and others have testified that he built the fence clear up to 10th street, so he had an enclosure all around that place and was in possession of it all.

Besides, let me remind you that the instructions of the court does not say anything about the fence, as I remember it. It speaks about possession. There is more than one element of possession. Mr. Clark told you about raising pumpkins and other things there. A man has possession of land when he is raising pumpkins or any vegetables or fruits upon it just as well as when he has a fence around it or if he exercises acts of ownership by pasturing thereon. Anything by which he manifests to all the world that he is the owner is evidence of possession. When that is supplemented by payment of taxes, that is sufficient against all the world, including such extra honest gentlemen as Mr. Walker and Mr. Bradshaw.

Mr. RIDOUT: We except to that.

Mr. WORTHINGTON: I want to say something complimentary to them, your honor, as I cannot say anything bad about them.

If I am right in what I have said so far, then we are entitled to a verdict for lot 3. This suit was begun in October, 1891.

149 There is not any pretense here that there have been any deeds made after Mr. Bradshaw took possession of the property, putting up a wire fence and afterwards putting up a big fence and building the shanty which this map does not show—a little brick establishment; I do not know that the evidence shows just how deep it is, so perhaps I had better not undertake to put a microscope on it; but the claim that is made here is that after suit was brought and before the amended declaration was filed, in March, 1893, there had been a change in the possession, and that we are not entitled to a verdict. As gently as I can I would like to refer to this chain of deeds, to which I gave an adjective the other day that I may not repeat now because of his honor's caution; but I want you to see what there is, in the first place, to satisfy any honest man—I suppose I can refer to the honesty of other people—that there has been a real change of possession in pencil lots 3, 4, 5, or 6 between October, 1891, and March, 1893. In the first place, let me remind you that all these deeds that were put in from these people who assume to themselves the honor of being descended from George Walker and who have not cared and the counsel in this case have not cared to prove it.

There were four of these deeds. The grantors were Chisholme and others, Reddock and others, Patrick and others, and Ridout, trustees, to Walker. They were all made in 1889, 1890, and 1891. There were three of those deeds from the people who claimed to be heirs. One was in August, 1889. In September, 1889, Walter made a deed to Lowndes and Ridout, as trustee-, to secure J. Augustus Taylor in the sum of $160,000. The second of these deeds from the heirs was made in November, 1889, and the next month, December, 1889, Walter makes another deed to Ridout and Lowndes to secure J. Augustus Taylor another $100,000, and so on.

That is the situation of the title when this question arises whether there was a change of possession. Everything has put title in Walter—deeds from England and from our friends, Lowndes and Ridout, in 1891—and there is no sarcasm in 1891. What happened? All you want is to understand what was done by these people in order to properly estimate the value of the evidence as to their being a change of possession. You understand what all this means. It means that although we own lots 4, 5, 6, and 3 in pencil numbers, we have got after the wrong man—we are barking up the wrong tree; that we have got to sue Lydia Hoagland or Morse or somebody else who was in possession; that Bradshaw was not in possession. You remember how he built his fence first around those four lots, and that that fence remained there undisturbed until after this amended declaration was filed, when there is no pretense about this so-called building association, which has some sort of shadowy claim, because it comes in too late, and they have to take subject to the result of the suit, whatever it may be. So that there is that enclosure around the four lots and no change in the enclosure from the way Bradshaw fenced it until the date of the amended declaration.

150 Down here in Walter's office there is everything to show that some of that land has been changed to somebody else and not to Bradshaw. It is very sad to examine those deeds and see just what they show, first, as to our friend Lydia—I may call her my friend, although I do not know whether to call her a man or a woman. You will remember that this suit was begun in October, 1891, and the question is whether there was any change of possession between that and March, 1893. The first deed is from Walker to Bradshaw, in September, 1892, and at the same time Bradshaw makes this deed to Lydia Hoagland, in September, 1892, and that was recorded on the 5th of September, 1892. That is what the record shows. If we wanted to sue for lots 3, 5, and 6 the record shows that Lydia Hoagland was in possession. Suppose that was done; that Lydia Hoagland on the very day the title was put in her put it out of her and into Mr. Walter's typewriter, Leda Morse, and when we made that amendment, which they invited to be made, and sued Lydia Hoagland, then, forsooth, they would have come here with this deed to Leda Morse, at the same time that she has not held title a minute, not having time to run up and take possession. Leda Morse'- deed was kept off the record until the fall of 1893, six months after this amended declaration was

filed, and then it was not put on record until she had executed, and there was recorded with it a deed putting title in Aaron Bradshaw. What do you think about such—but I must not abuse him. I do not know whether I am permitted to characterize that transaction, but it looks to me like dishonest practice, an attempt to hide the real possession of the premises and entangle the title through possession of the property, so that we cannot get it back.

Mr. RIDOUT: I reserve an exception.

The COURT: You have your exception.

Mr. WORTHINGTON: I want to remind you about some of Mr. Ridout's promises that he did not perform. You remember when we were putting in some deeds showing that some lots up there at that corner, 8 and 9 and C street-, they recited the consideration of $1 or $5 or some nominal consideration, and Mr. Ridout said, "We all know what that means. What was the real consideration?" and I told you we would show your when the time came. When the time came we produced Mr. Ashley, through whom that whole business was transacted. We showed you deeds conveying whatever title there was to ink-numbered lots 7, 8, and 9, and according to the theory of my friend they owned them. They sent in their little memorandum to show what they had paid the notaries and clerks of courts for their services, and not one cent more. When they came to put in those deeds from these so-called heirs of George Walker to Walter—this gentleman Walker—I beg your honor's pardon—they recited $5 consideration and I said we would like to know what was paid. Mr. Ridout said, "We will let you know." He had Bradshaw behind him; he had Walter behind him. Walter paid it if anybody did, and he knew whether he paid a cent.

Walter flies from the court-house and Bradshaw keeps mum,
151 and so you do not know any more about it than you did before. Yet here are people having paid full value for these pencil-numbered lots who have been paying taxes on them for many years, giving up the title without a cent compensation. On the other hand, you have a title derived through a chain of deeds made by people whom nobody knows and whom they do not pretend to prove had any title to the land, from which they had put upon record deeds of trust clouding the title of hundreds of honest people to secure $300,000, and that man sitting behind them who could tell you, but they keep their mouth- shut.

I say to you, gentlemen, that this is a case in which a jury of intelligence—reasonable, honest citizens—I suppose there is no objection to that—ought to have no difficulty in coming to a swift conclusion that such a thing as that cannot stand, and that the evidence which is introduced here to show that there was an honest possession under claim of title in years gone by, in Downs as to lot 3, and in Baldwin as to the other three lots, entitles us to a verdict as against Mr. Bradshaw.

Mr. RIDOUT: I reserve an exception to Mr. Worthington's remark about Walter flying from the court-house.

Mr. WORTHINGTON: I will amend that by saying he crawled.

The COURT: That remark goes out.

Mr. RIDOUT: And the attempted amendment is excepted to. I also except to Mr. Worthington's remark in the first part of his speech to the effect that he was talking with a gag in his mouth.

Charge to the Jury.

GENTLEMEN OF THE JURY: This case has occupied much time, and, as counsel on both sides have at various times duly suggested, it is a case quite out of the common sort of ejectment cases, but at its conclusion you are to decide upon all the evidence, measuring the evidence as it is applied and to be applied by you to the single instruction in respect of the possession of the lots called throughout this trial 1, 2, 3, and 20, and 3, 4, 5, and 6, the ink numbers or the pencil numbers, as they have been described by counsel and by witnesses.

Very much of the evidence, indeed the bulk of the documentary evidence in this case, therefore has and should have less importance in your consideration, because the question of possession during a term of years, to which I will presently refer, is the matter upon which you must decide the case.

The numbers of the lots, whether ink or pencil, the matters disclosed by the register of squares, the surveyor's books of squares, all of the old surveys and designations, are perhaps, therefore, only material now as you may find that the one enumeration or the other consists with the claim of ownership under which certain parties had obtained or held possession of lots 3, 4, 5, and 6, or 1, 2, 3, and 20, as they may be termed, and therefore your inquiry in respect to that mass of evidence is very much lightened, and you will probably only consider it as it may throw light upon the
152 claims of the plaintiff or of the defendant in respect to the possession of the lots in controversy according to the numbers (ink or pencil) claimed by the one or the other; and I perhaps can, therefore, do nothing better, and the court perhaps should do nothing else, than ask you, in reviewing all the testimony of the witnesses, in recalling all the documentary proof so far as in the jury-room you may, to apply it in the light of the claim of ownership upon the one side or the other, the right under which the plaintiff claims your verdict, the right under which the defendant claims to have acted in respect to acts of possession which induced the bringing of this suit—to ask you to consider the instruction I shall now read to you.

If you believe that Morris Downs took possession in 1868 of the lot, pencil number 3, fronting on B street, under his purchase of lot 3, in that square 939, from John Carroll Brent; that he—that is, Downs—held and occupied said lot as a place of residence for himself and his family exclusively, claiming it as his own until his conveyance of the same to the plaintiff and his cograntees and the other Ashleys, the family named so often in the testimony—to the plaintiff and his cograntees in 1881; that he (that is, Downs) paid rent therefor to the plaintiff and his cograntees until 1882; that since said last-mentioned date and until the defendant (that is,

Bradshaw) entered thereon, if you find from the evidence that he (Bradshaw) did so enter, the plaintiff and his cograntees continued to exercise acts of exclusive ownership over the said lot, paid taxes thereon and claimed title thereto, and that they (the plaintiffs) have never abandoned the same nor their claim to be owners thereof; and if you further believe from the evidence that Tyler Baldwin and those claiming under him were in actual exclusive possession of the lots referred to and called pencil numbers 4, 5, and 6, and did cultivate and pay taxes thereon and claim them as their own from the time of his (that is, Baldwin's) purchase of pencil-numbered lots 4, 5, and 6, and others from the Government of the United States, in 1851, until some time during the war, and that thereafter those claiming under him (Baldwin) continued to claim exclusive title thereto, paid the taxes thereon, rented the same or parts thereof from time to time, sold sods therefrom, gave their tenants permission to pasture cows thereon, and that the right of pasturage was so given, was actually exercised by such tenants down to about the time defendant (Bradshaw) entered upon the said lots, if you find from the evidence that Bradshaw did so enter, and that the plaintiff and others claiming under said Tyler Baldwin have never abandoned the said lots nor their claim to be the exclusive owners thereof; and if you further believe from the evidence that the defendant, Aaron Bradshaw, on or about the month of March, 1889, without the knowledge or consent of the plaintiff and others claiming under the said Downs or claiming under the conveyances to said Downs and Baldwin, entered upon what are known as pencil-numbered lots 3, 4, 5, and 6, and enclosed them with a fence, and that he was in possession of all of said lots on the 13th day of October, 1891, when the original declaration was filed, and that he continued in possession of all of said lots until March 11, 1893, when
153 the first amended declaration was filed—you will remember that the first declaration referred to pencil-numbered lot 4, while the amended declaration spoken of referred to pencil-numbered lots 3, 4, 5, and 6; and if you find that he was in possession of pencil-numbered lot 4 at the date mentioned, in October, 1891, and that he continued in possession of that lot and in possession of lots 3, 4, 5, and 6 (including 4) until March 11, 1893—and, for that matter, subsequently; and if the jury further believe from the evidence that Joseph R. Ashley, the grantee in the deed from Christopher Ingle and Mary Baldwin, died intestate in 1875, and that he left as his only heirs-at-law two sisters and three brothers, of whom the plaintiff is one, then your verdict should be in favor of the plaintiff for the undivided parts of the lots in controversy claimed by him in the declaration which you will take with you to your room.

This instruction I have read to you recites the essential facts in respect to the possession of this plaintiff and his cograntees in the deeds mentioned—essential to enable the plaintiff to obtain the verdict for the property and the interest in the property claimed in the declaration you will take with you, and the possession of the plaintiff and those under whom this plaintiff and the others claim

is characterized and defined to you in the instruction just read to you, that you may know what is necessary in order to make the possession which you are to find to enable the plaintiff to recover.

You are also, in the instruction just read to you, cautioned further that you must find that the defendant against whom the action was brought was in possession at the time (which I need not repeat) of the lots to which I have referred so frequently. You must find, to enable the plaintiff to recover, those facts. You must come to those conclusions by a fair preponderance of the evidence, and, if you are so satisfied by the fair preponderance of the evidence in this case, your verdict should be for the plaintiff and for the interest claimed in the declaration.

If the evidence fails to satisfy you in respect to such possession by the plaintiff, or in respect to such entry and possession by the defendant at the times I have named by a fair preponderance of the evidence, or fails to satisfy you of either, then your verdict should be for the defendant.

Gentlemen, I think perhaps I had better let the jury take, for the purpose of this case, the first amended declaration.

And after the giving of said charge to the jury, counsel for the plaintiff suggested that the jury take the second amended declaration, the one on which they claim the verdict should be based.

The court replied: The first amended declaration gives the date of possession as alleged.

Counsel for plaintiff stated to the court that the first amended declaration is superseded by the second amended declaration; the only one now in the case is the second amended declaration.

Counsel for defendant objected and excepted to the jury
154 taking the second amended declaration, because the instruction given for the plaintiff limits their finding on the subject of possession down to 1893, and for the further reason that under the instruction granted at the instance of the plaintiff the only paper which the jury can take is the first amended declaration, and said counsel objected to the jury being allowed to take any other paper with them on the ground that in the instruction asked by the plaintiff he has limited himself to the period of possession and statement of title which is contained in that declaration.

Thereupon the court said: "The jury will take with them the present amended declaration, and I allow them to take with them the first amended declaration only in order that they may have fixed in their minds the date of the alleged possession of defendant Bradshaw, March 11, 1893, and for no other purpose."

Counsel for plaintiff requested the court "also to say to the jury that if they should find for the plaintiff they should render their verdict in accordance with the claims of the second amended declaration."

The court in reply said: "Yes, gentlemen of the jury, if you find for the plaintiff, you will find in accordance with the claim as set out in the second amended declaration. The court allows you to take with you the first amended declaration for the sole purpose of

fixing the date of the alleged possession of the defendant Bradshaw—March 11, 1893."

Counsel for defendant excepted to all the foregoing rulings of the court concerning the papers proper to be taken by the jury to their room and the form of the verdict on the ground that the plaintiff, in the instruction asked by his counsel and granted by the court, had elected to stand upon the first amended declaration and cannot recover beyond that, and is thereby limited himself to the period of entry alleged in the first amended declaration.

Counsel for defendant also objected to repetition by the court in its charge to the jury of the instructions given by it at the instance of the plaintiff's counsel; which objection being overruled, he excepted to such ruling, and said exception was duly noted on the minutes of the court, said counsel stating as an additional reason for said objection that the plaintiff in his several declarations claims title in fee-simple, while the said instruction allows the jury to find a verdict in favor of the plaintiff, even though the proof in the case should fall far short of showing possession for a sufficient length of time to create title in fee-simple.

The court thereupon instructed the jury to retire to their room, saying:

"The form of your verdict, if for the defendant, will be 'For the defendant' and no more. If you find for the plaintiff, you will find for the plaintiff for the possession of the property in controversy as it is set forth in the second amended declaration."

And counsel for the defendant thereupon, in reply to an inquiry by the court, stated as a further ground of objection to the instructions just given by the court that the whole theory of the
155 trial on the part of the plaintiff had been, until a few minutes before, that the plaintiff was relying upon the first amended declaration, but now, at the 11th hour, plaintiff's counsel had called the court's attention to the second amended declaration, at the same time insisting that the time of defendant's possession was to be fixed by the filing of the first amended declaration, and counsel for defendant again excepted to the aforesaid rulings of the court, as to the form of the verdict, and as to the papers proper to be taken by the jury to their room.

After which the court said to counsel: The form of the verdict is for possession—is for possession of the property in controversy. That is the old English form. If they find for the plaintiff they find for the possession of the property. There is no other mode.

Thereupon counsel for the plaintiff said to the court and jury: "Plaintiff will allow defendant to have the mesne profits to pay his lawyers;" to which letter remarks counsel for the defendant objected and excepted.

And thereupon the court further instructed the jury as follows: "I have not noticed the claim for mesne profits. Gentlemen of the jury, if you find for the plaintiff, you will find for the plaintiff for the possession of the property in controversy and one cent damages; if you find for the defendant, you find for the defendant and no more."

To which instructions counsel for the defendant excepted on the ground that, among other things, there is no proof of mesne profits, and also because the instructions now given by the court *is* so out of harmony with the instructions already given at the instance of the plaintiff that the two cannot stand together. The court has so instructed the jury in writing that if that instruction be allowed to stand it will be improper and inconsistent to give the jury the instruction now asked by plaintiff's counsel as to the use which may be made of the second amended declaration. The court in its verbal instruction, after having called the jury's attention to the date of entry in 1893, authorizes them to find in accordance with the second amended declaration, which alleges a very different date.

The court thereupon stated to counsel for defendant:

"It may have escaped your attention that I instructed the jury that they must find that the plaintiff was in possession March 11, 1893, or thereafter, if in their judgment all the evidence in the case showed such latter possession."

To which rulings and instructions of the court counsel for the defendant objected and excepted.

All the objections and exception- hereinbefore set forth were separately made and taken by defendant's counsel, and each exception was duly noted by the justice presiding upon his minutes before the jury retired to consider of their verdict.

And thereupon, after all the aforesaid proceedings were had, which are hereby made part thereof, and before the jury retired to consider of their verdict, the defendant, by his counsel, prayed the court to sign and seal this his bill of exceptions and make
156 the same part of the same record, to have the same force and effect as to each and every of the exceptions so as aforesaid separately taken by the said defendant *are* noted by the court on its minutes as if the same and each of them had been set forth in a separate bill of exceptions, signed and sealed by the justice presiding at said trial, which prayer was granted, and accordingly, before the jury retired to consider of their verdict, the justice presiding at said trial signs and seals this the said bill of exceptions, to have the force and effect aforesaid.

Thereupon the jury retired to consider of their verdict and afterwards returned into court, and in response to the inquiry of the clerk whether they had agreed upon their verdict the foreman of the jury replied:

"We find for the plaintiff according to the claim in the second amended declaration."

Whereupon the court inquired:

"Do you find the interest claimed by the plaintiff in the second amended declaration?"

The foreman replied:

"That is it, and one cent damages."

A juryman remarked:

"The verdict is written."

Whereupon a paper was handed by one of the jurymen to the

clerk, who handed it, together with one of the declarations, to the judge, who then read the claim as contained in the second amended declaration and asked the jury if they found otherwise or as set forth in said second amended declaration; whereupon [some members of]* the jury answered in the affirmative (that they found for the plaintiff and the interest claimed in the second amended declaration).*

[The court then inquired whether they [all]† so found and one of the jurymen said:

"The verdict is unanimous."]†

Counsel for the defendant insisted upon the entry of the verdict as first rendered by the foreman without any addition or explanation, and objected to all the inquiries of the court and all the responses thereto by the different members of the jury; but the court overruled all the objections of the counsel for the defendant in that behalf, and directed that the verdict be recorded as if it had originally been rendered by the foreman in favor of the plaintiff for the interest claimed in the second amended declaration and one cent damages.

To which action of the court in overruling the several objections of the defendant's counsel and in directing the form in which the verdict should be entered, and to each of said rulings, counsel for the defendant then and there excepted, and said exceptions were then and there severally noted by the justice presiding upon his minutes.

157 Sealed by the court now for then this third day of November, A. D. 1897.

LOUIS E. McCOMAS, [SEAL.]
Associate Justice.

Memorandum.

December 3, 1897.—Time to file transcript in Court of Appeals extended to February 8, 1897.

(Here follows diagram marked page 157*a*.)

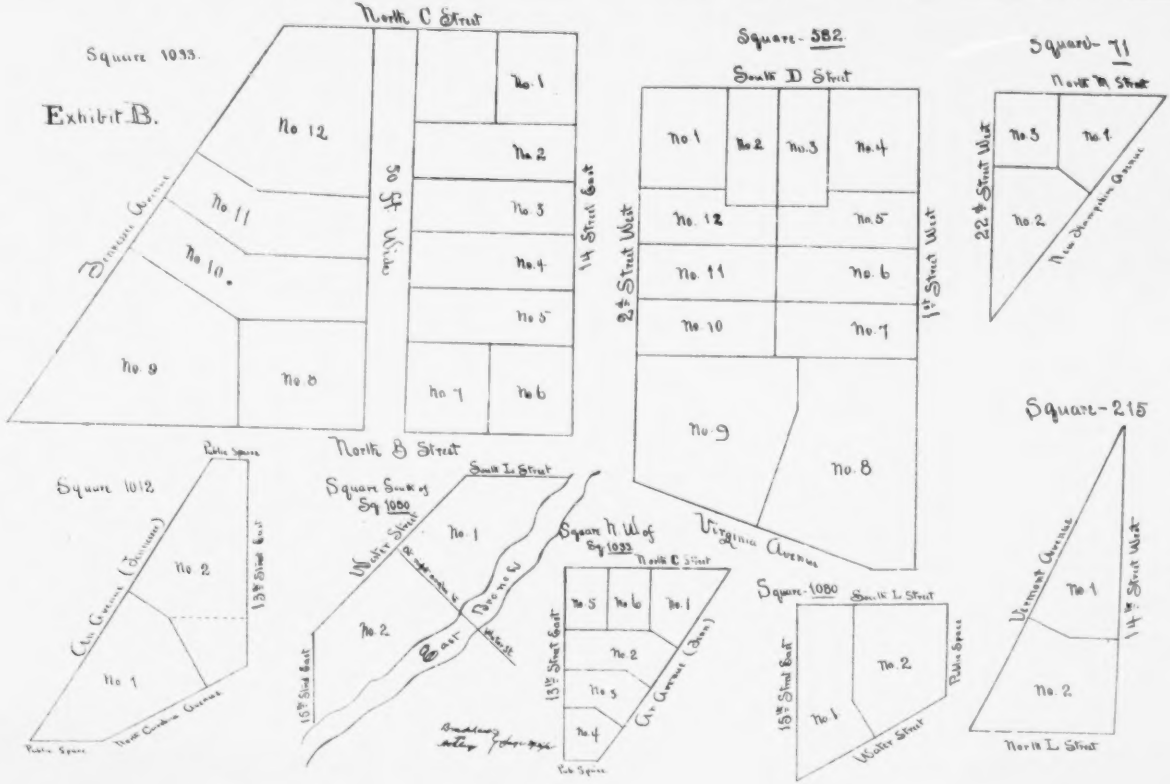
In the Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 3—, inclusive, are true copies of originals in cause No. 32181, at law, wherein Nehemiah B. Ashley is plaintiff and Aaron Bradshaw, defendant, as the same remains upon the files and records of said court.

[*Matter enclosed in parentheses added in ink in copy.]
[†Words enclosed in brackets erased in copy.]

Exhibit B.


North C Street
Square 1033.
No 12
No 11
No 10
No 9
No 8
No 1
No 2
No 3
No 4
No 5
No 7
No 6
90 ft Wide
14 Street East
Delaware Avenue
Square - 582
South D Street
No 1
No 2
No 3
No 4
No 12
No 5
No 11
No 6
No 10
No 7
No 9
No 8
22nd Street West
1st Street West
Virginia Avenue
Square - 71
North M Street
No 3
No 1
No 2
22nd Street West
New Hampshire Avenue
Square 1012
Public Square
No 2
No 1
13th Street East
Public Square
North Carolina Avenue
North B Street
Square South of Sq 1080
South L Street
Water Street
No 1
No 2
15th Street East
Square N W of Sq 1033
North C Street
No 5
No 6
No 1
No 2
No 3
No 4
13th Street East
Pub Square
Square - 1080
South L Street
No 1
No 2
15th Street East
Public Space
Water Street
Square - 215
Vermont Avenue
No 1
No 2
14th Street West
North L Street

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 28th day of January, A. D. 1898.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 769. Aaron Bradshaw, appellant, *vs.* Nehemiah B. Ashley. Court of Appeals, District of Columbia. Filed Jan. 31, 1898. Robert Willett, clerk.

158 *Addition to Record per Stipulation of Counsel.*

Court of Appeals of the District of Columbia, January Term, 1898.

AARON BRADSHAW, Appellant, *vs.* NEHEMIAH B. ASHLEY. } No. 769.

Filed March 3, 1898.

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Original declaration, filed October 13, 1891	2	1
Pleas to original declaration, filed November 3, 1891	5	3
Amended declaration, filed March 11, 1893	6	3
Pleas to amended declaration, filed April 24 1893	9	4
Clerk's certificate	10	5

159 In the Court of Appeals of the District of Columbia.

AARON BRADSHAW, Appellant, *vs.* NEHEMIAH B. ASHLEY. } No. 769.

In the Court of Appeals of the District of Columbia.

AARON BRADSHAW *vs.* NEHEMIAH B. ASHLEY. } No. 769.

It is hereby stipulated that copies of the original declaration, filed October 13th, 1891; the pleas thereto, filed November 3rd, 1891; the amended declaration, filed March 11th, 1893, and the pleas thereto, filed April 24th, 1893, may be transmitted by the clerk of the supreme court of the District of Columbia to the court, to be forthwith printed and to form part of the transcript of the record herein as effectively as if such copies had originally been incorporated into the said transcript.

JNO. RIDOUT,
Attorney for Appellant.
J. J. DARLINGTON,
Attorney for Appellee.

[Stamped on back:] Mar. 2, 1898.

Filed October 13, 1891.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY
vs.
AARON BRADSHAW. } No. 32181. At Law, Doc. # 35.

Declaration.

1. The plaintiff sues the defendant to recover possession of an undivided one-fifth part of a certain piece or parcel of land situate in the city of Washington, District of Columbia, and known as original lot one, in square numbered nine hundred and thirty-nine (939), according to the plan or plat of said city, and otherwise known and designated as lot numbered four, in said square 939, according to the subdivision of said square recorded in Liber C. H. B., at folio 41, of the records of the surveyor's office for the District of Columbia, said lot being bounded as follows, namely:
160 Beginning for the same at the southwest corner of said square and running thence east fifty-seven feet and eleven inches along the line of B street north, thence seventy-five feet north, thence fifty-seven feet and eleven inches west, and thence south seventy-five feet to the place of beginning; of which described part of said lot and premises the plaintiff was heretofore, to wit, on the 27th day of March, A. D. 1891, lawfully possessed, when the defendant, who is now in actual occupation of the said part of said lot and premises, entered the same and thereupon unlawfully ejected the plaintiff, and thenceforward unjustly detained and still detains the same from the plaintiff.

And the plaintiff claims possession of the said described part of the said lot and premises and appurtenances as tenant in fee-simple, together with the costs of this suit.

2. The plaintiff further sues the defendant for that the defendant heretofore, to wit, on the 27th day of March, A. D. 1891, unlawfully entered upon a certain piece or parcel of land situate in the city of Washington, District of Columbia, and known as original lot one, in square numbered nine hundred and thirty-nine (939), according to the plan or plat of said city, and otherwise known and designated as lot numbered four, in said square 939, according to the subdivision of said square recorded in Liber C. H. B., at folio 41, of the records of the surveyor's office for the District of Columbia, said lot being bounded as follows, namely: Beginning for the same at the southwest corner of said square and running thence east fifty-seven feet and eleven inches along the line of B street north, thence seventy-five feet north, thence fifty-seven feet and eleven inches west, and thence south seventy-five feet to the place of beginning, and ejected the plaintiff therefrom, and has continued to keep the plaintiff ejected and expelled from the said described lot and premises, of which the plaintiff was and is the tenant in fee-simple of an undivided one-fifth interest, and has received the rents,

issues, and profits thereof, to wit, of the value of five hundred dollars, whereby the plaintiff has lost said rents, issues, and profits of great value, to wit, of the value of five hundred dollars, and the plaintiff sues to recover said rents, issues, and profits and costs of suit.

J. J. DARLINGTON &
R. D. MUSSEY,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the first day of the first special term of the court occurring twenty days after service hereof; otherwise judgment.

J. J. DARLINGTON &
R. D. MUSSEY,
Attorneys for Plaintiff.

161 Filed November 3, 1891.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY
vs.
AARON BRADSHAW. } At Law. No. 32181.

The defendant for plea to the declaration says:
He is not guilty as alleged.
And for a further plea to the second count of the said declaration he says:
He never was indebted as alleged.

JOHN RIDOUT,
Att'y for Def't.

Filed March 11, 1893.

In the Supreme Court of the District of Columbia, March 11th, 1893.

NEHEMIAH B. ASHLEY, Plaintiff,
vs.
AARON BRADSHAW, Defendant. } At Law. No. 32181, Doc. 36.

Amended Declaration.

The plaintiff, with leave of the court first had and obtained, files this his amended delaration:

1. The plaintiff sues the defendant to recover possession of an undivided one-fifth ($\frac{1}{5}$) part of each of certain pieces or parcels of land situate in the city of Washington, District of Columbia, and known as original lots numbered twenty (20), one (1), two (2), and three (3), in square numbered nine hundred and thirty-nine (939), according to the plan or plat of said city, and otherwise known and designated as lots numbered three (3), four (4), five (5), and six (6), in said square numbered nine hundred and thirty-nine (939), according to the subdivision of said square recorded in Liber C. H. B., at folio 41, of the records of the surveyor's office for the District of

Columbia; of which described parts of each and all of said lots and premises the plaintiff was heretofore, to wit, on the 27th day of March, A. D. 1891, lawfully possessed, when the defendant, who is now in the actual occupation of the said parts of each and all of said lots and premises, entered the same and thereupon unlawfully ejected the plaintiff, and thenceforward detained and still detains the same from the plaintiff.

And the plaintiff claims possession of the said described parts of each and all of the said lots and premises and appurtenances as tenant in fee-simple, together with the costs of this suit.

2. The plaintiff further sues the defendant for that the defendant heretofore, to wit, on the 27th day of March, A. D. 1891, unlawfully entered upon each and all of certain pieces of parcels of
162 land situate in the city of Washington, District of Columbia, and known as original lots numbered twenty (20), one (1), two (2), and three (3), in square numbered nine hundred and thirty-nine (939), according to the plan or plat of said city, and otherwise known and designated as lots numbered three (3), four (4), five (5), and six (6), in said square numbered nine hundred and thirty-nine (939), according to the subdivision of said square recorded in Liber C. H. B., at folio 41, of the records of the surveyor's office for the District of Columbia, and ejected the plaintiff therefrom, and has continued to keep the plaintiff ejected and expelled from the said described lots and premises; of each and all of which said lots and premises the plaintiff was and is tenant in fee simple of an undivided one-fifth interest, and has received the rents, issues, and profits thereof, to wit, of the value of five hundred dollars, whereby the plaintiff has lost said rents, issues, and profits of great value, to wit, of the value of five hundred dollars, and the plaintiff sues to recover said rents, issues, and profits and costs of suit.

J. J. DARLINGTON,
J. H. LICHLITER,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the first day of the special term of the court occurring twenty days after service hereof; otherwise judgment.

J. J. DARLINGTON,
J. H. LICHLITER,
Attorneys for Plaintiff.

I hereby acknowledge service of a copy of the foregoing amended declaration this eleventh day of March, A. D. 1893.

JNO. RIDOUT,
Attorney for Defendant.

Filed April 24, 1893.

In the Supreme Court of the District of Columbia.

NEHEMIAH B. ASHLEY, Pl't'ff, vs. AARON BRADSHAW, Def't. } At Law. No. 32181, Doc. 36.

The defendant for plea to the amended declaration in this case says—

That he is not guilty as alleged.

And for further plea to the second count of said amended declaration the defendant says he never was indebted as alleged.

JNO. RIDOUT,
Attorney for Defendant.

163 Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing are true copies of originals in cause No. 32181 at law, wherein Aaron Bradshaw is plaintiff and Nehemiah B. Ashley is defendant, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 2nd day of March, A. D. 1898.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: No. 769. Aaron Bradshaw, appellant, *vs.* Nehemiah B. Ashley. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Mar. 3, 1898. Robert Willett, clerk.

164 THURSDAY, *November 3d, A. D.* 1898.

AARON BRADSHAW, Appellant, vs. NEHEMIAH B. ASHLEY. } No. 769.

On motion, one hour additional time allowed counsel on each side in the argument of this case. The argument in the above entitled cause was commenced by Mr. Wm. F. Mattingly, attorney for the appellant, and was continued by Messrs. J. J. Darlington and A. S. Worthington, attorneys for the appellee.

FRIDAY, *November 4th, A. D.* 1898.

AARON BRADSHAW, Appellant, vs. NEHEMIAH B. ASHLEY. } No. 769.

The argument in the above entitled cause was continued by Mr. A. S. Worthington, attorney for the appellee, and by Mr. John Ridout, attorney for the appellant, and was concluded by Mr. Wm. F. Mattingly, attorney for the appellant.

165 AARON BRADSHAW, Appellant,
vs.
NEHEMIAH B. ASHLEY. } No. 769.

Opinion.

Mr. Justice MORRIS delivered the opinion of court:

The suit here is an action of ejectment instituted in the supreme court of the District of Columbia by the appellee, Nehemiah B. Ashley, as plaintiff, against the appellant, Aaron Bradshaw, as defendant, to recover the possession of an undivided interest in certain lots of ground in square 939, in the city of Washington. The origin of the controversy is due to an apparent anomaly in the enumeration of the original lots in the square, which it is proper here to state.

The city of Washington comprises about 1,274 so-called squares of land, according to its original plan, all of which are divided into lots; and with the exception of eight squares, which are of irregular shape and not rectangular at all, the enumeration of the lots in each and all the squares proceeds upon a uniform system. This system is to begin with lot 1 at the southeast corner of the square, and to proceed thence in consecutive numerical order, first to the west, thence to the north, thence to the east, and thence to the south to the place of beginning. This method of enumeration is coeval with the original division of lots and squares in the city of Washington between the original proprietors of the land and the United States. Records of the division, signed by the original proprietors and by the commissioners acting for the United States, were made upon separate sheets of paper, one for each square, which sheets of paper were designated as "Certificates of division," and were bound together, and with the exception of some few that have been lost, were preserved in the office of the commissioner of public buildings and grounds, where they are yet retained. Each sheet of paper, or certificate of division, purports, by an endorsement upon it, to have been recorded in a record book kept for the purpose, and designated in such endorsement as "Square Book No. —."

But there are in existence two sets of record books purport-
166 ing to be the transcripts of the original certificates of division, one designated as a "Register of squares," in three volumes, kept in the office of the commissioner of public buildings and grounds; and the other designated as "Records of squares," in four volumes, which is kept in the office of the surveyor of the District of Columbia. There seems to have been no express provision of law for the custody of these records; and it is apparent from the record of the cause now before us, that there is considerable doubt which of these two sets is the true official record. The question, although in the development of this cause it has ceased to be of much importance for the determination of the controversy between the parties to this suit, is of general importance in consequence of the fact that there are discrepancies between the two sets, and discrepancies between each of them and the original certificates of division. These

last, however, seem to correspond more nearly to the record in the surveyor's office than to that in the office of the commissioner of public buildings and grounds, and thus to indicate that the transcript in the surveyor's office is the true record.

Square 939, involved in the present controversy, seems to stand alone in its failure to conform to the otherwise universal system of enumeration. Both the original certificates of division, and the two transcripts before mentioned as purporting to be records thereof, show, as they are at present found, a double system of enumeration of the lots in this square, one with the numbers marked in ink, beginning for lot 1, not at the southeast, but at the southwest corner, and proceeding thence north, thence east, thence south, thence west to the place of beginning, which, as is apparent, is not in accordance with the system adopted for all the other squares; and the other with the numbers marked in pencil, beginning for lot 1 at the southeast corner, and proceeding thence west, thence north, thence east, and thence south to the place of beginning, in conformity with the general system. It may be presumed that the enumeration in pencil marks was affixed after the enumeration in ink had been made; but there is nothing to show when or by whom it was done, further than that it is shown to have come down with the books themselves to the present custodians, and to have antedated their memory or the memory of any of the witnesses who have testified in regard to them.

It was sought, on the part of the defendant, to be shown that the exceptional enumeration in ink was not confined alone to square 939, and that there were nine other squares that failed to conform to the general system. But the assumption in regard to one of these squares, No. 949, is shown to have been a misapprehension; and the other eight are all of them so irregular in form that they are not entitled to be regarded as exceptions to the rule. The fact remains, that square 939, if the figuring in ink be regarded as the true enumeration, stands alone in that regard as the sole exception to the universal system.

There are twenty lots in square 939. If the figures in ink are the correct figures, the lots in controversy would properly be designated by the numbers 1, 2, 3 and 20, which numbers were assigned to the original proprietor, George Walker, in the division between him and the United States. But if the figures in pencil are the correct figures, the lots in controversy would be designated by the numbers 4, 5, 6 and 3; and only one of these numbers (3) was assigned to George Walker in the division, the other numbers 4, 5 and 6, being assigned to the United States.

The claim of the plaintiff is to the lots designated as pencil lots 4, 5, 6 and 3, which are the same respectively as ink-numbered lots 1, 2, 3 and 20. If the pencil numbers are the true enumeration, it does not seem to be seriously, if at all, controverted that the plaintiff has a perfect legal title of record to three of the lots which he claims, 4, 5 and 6, as these lots in the division remained to the United States and were duly disposed of by the United States in 1851, to the persons under and through whom the plaintiff claims. But if the

ink numbers are the true numbers, neither one of the parties to this cause has any record title whatever, so far as the record before us shows, to the property in controversy, which would then be lots 1, 2 and 3 and 20. Pencil lot 3, which is ink lot 20, and which, by whatever designation known, went to George Walker in the division, is claimed by the plaintiff under a tax title emanating from the corporation of Washington in 1822.

The original declaration in this cause was filed by the plaintiff on October 13, 1891, and sought to recover only an undivided interest in lot 1, otherwise known as lot 4; and it alleged the defendant's unlawful entry as of the date of March 27, 1891. An amended declaration referred to in the record as the first amended declaration, was filed on March 11, 1893, wherein the plaintiff claimed an undivided interest in lots 20, 1, 2 and 3, otherwise known as lots 3, 4, 5 and 6; and the defendant's unlawful entry was again alleged as made on March 27, 1891. A second amended declaration was filed on October 26, 1896, which claimed the same interest in the same property as the first amended declaration, but alleged the defendant's unlawful entry in one count as being on March 27, 1889; in another count as being on November 28, 1890; and in two other counts claimed *mesne* profits severally from those several dates. There was no proof, however, of *mesne* profits; and the counts respecting them have practically passed out of the case; and the difference in the alleged times of entry by the defendant does not appear to be of any importance.

To each and all the counts of the second amended declaration the defendant pleaded the general issue, as he had already pleaded to the previous declarations; and the case went to trial before a jury on this second amended declaration and the pleas thereto.

The theory, upon which the plaintiff proceeded, and to the support of which his testimony was directed, seems to have been threefold: (1) That the pencil numbers affixed to the lots in square 939 were the correct numbers, and that therefore there was in him a perfect legal title of record upon which he was entitled to recover; (2) that, if on the other hand the ink numbers were the correct numbers, there was an adverse possession for upwards of twenty years, which had become a good possessory title, inuring to
167 the benefit of the plaintiff, and upon which he was entitled to recover; and (3) That, even if the plaintiff had neither a good record title nor a good possessory title, yet he, and those under whom he claimed, had been in such actual, continuous and peaceable possession for years as that he was entitled, on the strength of such peaceable possession, to recover against a mere trespasser without title, or pretense of right or title, such as he claimed the defendant in the suit to be.

In the testimony it appeared, as already stated, that the pencil marks in question were quite ancient; that they had been on all the records beyond the time to which the memory of any of the witnesses could go; that in or about the year 1816 there had been a record made of squares in the city of Washington by one De Kraft, at or about that time the surveyor of the city, under authority from

the corporation of Washington, which was printed for public use, and in which square 939 was shown with an enumeration of the lots identical with the so-called pencil enumeration and conformable to the system applied to all the other squares; that in or about the year 1868, John Carroll Brent and others, then owning or claiming ownership of the square, and apparently aware of the confusion in regard to the enumeration and intending to rectify it, made a new subdivision of the square by adopting and recording the pencil enumeration, and made conveyances of lots therein in accordance with this enumeration; that in the said year 1868, the said John Carroll Brent, then claiming to be the owner of pencil lot 3, conveyed the same to one Morris Downs, from and through whom the plaintiff's title was regularly derived; that, in the year 1851, one William T. Baldwin or William Tyler Baldwin purchased from the United States lots 4, 5, and 6, and other lots, and entered into possession of the pencil lots so numbered as those which he had purchased; and that the title of Baldwin in those lots had been derived to the plaintiff, to the extent of the interest claimed by the latter, by regular deeds of conveyance.

It appeared, further, that the brother of the plaintiff, from whom the latter immediately derived his title, had purchased part of the property in controversy in the year 1872 and part in 1881; and that he exercised acts of ownership over the premises by collecting rent from the occupants of a small house thereon, by selling sods, and disposing of a right of pasturage of cows, as well as by paying the taxes on the property.

The defendant in his testimony did not seek to show any right, title, or estate in himself, or in any others under whom he held. His effort was mainly directed towards the disproving of the plaintiff's case. His testimony tended to throw discredit on the pencil enumeration of the lots, and to controvert the continuity and sufficiency of the plaintiff's possession; and it seems to have been admitted by him that he entered upon the property and took possession of it with some show of force and violence on or about March 27, 1889. But a large part of his testimony consisted of deeds and other documentary evidence having reference to the title supposed to be outstanding in George Walker or his heirs, and which were offered in evidence, not for the purpose of showing any right or title in the defendant, which it was not claimed that they could do, but merely to show that the defendant was not a trespasser, as alleged on the part of the plaintiff.

George Walker is presumed to have been an alien, and to have left the United States and returned to his native country, Scotland or England, not long after the division of his lands with the United States; and he seems never again to have concerned himself with his property in the city of Washington by the payment of taxes upon it or in any other way. When he died does not appear. Neither does it appear that his heirs, or any persons claiming to be his heirs, concerned themselves in any manner with the property, until a short time before the entry of the defendant in this cause, when the general appreciation in the values of land in this city

caused an almost equally general investigation into forgotten or long-neglected titles.

The defendant introduced in evidence seven several deeds purporting to have been executed by persons in the United Kingdom of Great Britain and Ireland, and who claimed therein to be heirs-at-law of George Walker. These deeds assumed to convey to John H. Walter of the city of Washington the lands in said city of which George Walker had died seized and possessed, including the lots in square 939 which had been assigned to him in the division with the United States. The earliest of these deeds bore the date of August 2, 1889, and was recorded on September 27, 1889, the same day on which the defendant made his entry on the land in controversy. But there was no proof, further than the recitals in the deeds themselves, that the grantors in these deeds were in fact heirs of George Walker.

There was also offered in evidence by the defendant the record of an equity suit thereafter instituted in the supreme court of the District, wherein the same John H. Walter was complainant and certain persons alleged to be heirs of George Walker, who had not executed any deeds of their interest in his estate, were made defendants, the purpose of which suit was to have partition of the estate whereof George Walker had died seized, including his lots in square 939. Under a decree rendered in this suit there was a sale by trustees and a conveyance to John H. Walter of lots 1, 2, 3 and 20, in square 939, with other property.

In the next place, there were introduced in evidence, on behalf of the defendant, three several deeds of conveyance of lots 40, 41, 42, 48, 49, 50, 51, 52 and 53, in a subdivision of square 939 purporting to have been made by John H. Walter—the first of these three deeds being by John H. Walter to Mary E. Bradshaw; the second by Mary E. Bradshaw and her husband Aaron Bradshaw to Lydia Hoagland; and the third by Lydia Hoagland to Leda M. Morse, who seems to have been a typewriter in the office of John H. Walter. Subsequent to these was another deed, which was offered in evidence, from Leda M. Morse to Aaron Bradshaw, presumably the appellant here, although that fact does not appear from the record, conveying lots 48, 49, 50, 51, 52 and 53, in Walter's subdivision of lots in square 939, which deed was recorded on October 30, 1893. There is
nothing in the record of the cause before us to show the
168 identity of any of the property described in any one of these
four last-mentioned deeds with any part of the property in suit; and it is not quite apparent why there should have been such an array of deeds.

The defendant next introduced in evidence an unrecorded tripartite contract purporting to have been executed on January 31, 1889, by persons, some of them apparently identical with the grantors in the seven deeds before mentioned or with some of them, claiming therein to be the heirs of one James Walker, who is stated in the paper to have been a brother and one of the heirs-at-law of George Walker, as parties of the first part; J. Augustus Taylor and John H. Walter, of the city of Washington, as parties of the second part; and James Aitken, of Falkirk, Scotland, as party of the third

part, who was also one of the parties of the first part, and who by the contract was constituted the agent of them all to deal thereafter with the parties of the second part. The substance of this contract was that the parties of the second part should, at their own cost and expense, and without any liability for cost or expense on the part of the parties of the first part, prosecute the claim of these latter to any lands in the city of Washington to which they were entitled as the heirs of the said James Walker, and should receive as compensation for their services twenty-five per centum of the net recoveries, after the reimbursement to themselves of the cost and expenses of prosecution.

This tripartite contract recited the execution of deeds of the property by the parties of the first part under the same date to John H. Walter, a date which is not consistent with the deeds previously offered in evidence, which are all subsequent to it; and it recited also the fact of the execution of a deed of trust by Walter to secure a note for $250,000 which was to be held merely as security for the performance by him of his part of the contract. But, instead of this one deed of trust of even date with the contract to secure a note for $250,000, the defendant then offered in evidence three several deeds of trust, all of them of different dates, differing as well between themselves as from the contract, and each one to secure the sum of $10[illegible],000.

There was then offered in evidence, on behalf of the defendant, a deed of release from the trustees in these last-mentioned three several deeds of trust to Mary F. Bradshaw, dated September 6, 1892, and recorded on September 12, 1892, whereby they purported to convey to her the lots numbered 40, 41, 42, 48, 49, 50, 51, 52 and 53, in Walter's subdivision of lots in square 939.

This was the substance of the testimony on behalf of the defendant, so far as it seems to be material for the determination of the questions involved in this case.

The plaintiff thereupon, resting his case on the third branch of his theory, to wit, that he and those under whom he claimed had been in the peaceable enjoyment and possession of the premises for many years prior to the defendant's entry and down to that time, and that the defendant was a mere trespasser without right or title of any kind, requested the court to give to the jury the following instruction, which was the only instruction asked by him, and which, as it is the basis of the principal question of controversy before us, we quote in full:

"If the jury believe from the evidence that Morris Downs took possession in 1868 of the lot referred to in the testimony as pencil number 3, fronting on B street, under his purchase of lot 3, from John Carroll Brent; that he held and occupied said lot as a place of residence for himself and his family exclusively, claiming it as his own, until his conveyance of the same to plaintiff and cograntees in 1881; that he paid rent therefor to the plaintiff and his cograntees until 1882; and that since said last-mentioned date and until the defendant entered thereon, if the jury find from the evidence that he did so enter, the plaintiff and his cograntees continued to exer-

cise acts of exclusive ownership over the said lot, to pay taxes thereon, and to claim title thereto, and that they had never abandoned the same nor their claims to be owners thereof; and if they further find from the evidence that Tyler Baldwin and those claiming under him were in actual, exclusive possession of the lots referred to in the evidence as pencil numbers 4, 5 and 6, cultivating and paying taxes thereon and claiming them as their own from the time of his purchase of lots 4, 5 and 6, and others, from the United States in 1851, until some time during the war, and that thereafter those claiming under him continued to claim exclusive title thereto, pay the taxes thereon, renting the same or parts thereof from time to time, sold sods therefrom, and gave their tenants permission to pasture cows thereon, and that the right of pasturage so given was actually exercised by said tenants down to about the time the defendant entered upon said lots, if the jury find from the evidence that he did so enter, and that the plaintiff and others claiming under the said Baldwin have never abandoned the said lots nor their claim to be the owners thereof; and if the jury further believe from the evidence that the defendant, Aaron Bradshaw, in or about the month of March, 1889, without the knowledge or consent of the plaintiff and others claiming under the said Downs and Baldwin, entered upon the lots known as pencil numbers 3, 4, 5 and 6, and inclosed them with a fence; that he was in possession of all of said lots on the 13th day of October, 1891, when the original declaration in this cause was filed, and that he continued in possession of all of said lots until March 11, 1893, when the first amended declaration was filed, and subsequently; and if the jury further believe from the evidence that Joseph R. Ashley, the grantee in the deed from Christopher Ingle and Mary Baldwin, died intestate in 1875, and that he left as his only heirs at-law two sisters and three brothers, of whom the plaintiff is one, then their verdict should be in favor of the plaintiff for the undivided parts of the lots in controversy claimed by him in the declaration."

This instruction was given by the court to the jury, with some explanation; and the instruction constituted the substance of the charge in the case.

The defendant requested eight instructions, all of which were refused. Five of these amounted to a peremptory direction to the jury to return a verdict for the defendant; and the other three were scarcely different from them. One of the three was to the effect that the jury should be told as matter of law that the division
169 of lots in square 939 between George Walker and the United States was in accordance with the ink numbers, and that therefore the verdict should be for the defendant. A second was to the effect that the jury should be told as matter of law that the sale of lots by the United States to Baldwin in 1851 was according to the ink numbers, and not according to the pencil numbers; and that, therefore, the verdict should be in favor of the defendant. And the third was that there was no evidence, proper to be considered by the jury, to show that either the original division between the United States and George Walker or the conveyance by the United

States to Baldwin in 1851 had been in accordance with the pencil numbers, and that therefore the verdict should be for the defendant.

During the presentation of the case to the jury by the counsel for the plaintiff, repeated exceptions were taken to their remarks; and several of these exceptions are now made the basis of assignments of error.

In its charge to the jury, which, as already stated, contained but little more than the instruction requested on behalf of the plaintiff, the court stated that the mass of documentary evidence in the case had become of little importance further than as it served to enlighten the claim of ownership of the parties in possession, and that the jury should decide the issue between the parties upon the question of possession for a term of years. At the conclusion of it, the court told the jury that they might take with them to their room the first amended declaration, so that they might be able to fix in their minds the date of the alleged entry by the defendant, as there stated—March 11, 1893. Counsel for plaintiff requested that they should also be permitted to take with them the second amended declaration under which the trial was had. To this the counsel for the defendant objected, and reserved an exception to its allowance by the court.

The court then also told the jury what the form of their verdict should be in either event; and that, if they found for the plaintiff, they might also allow him one cent damages, besides the possession of the property. To this ruling likewise exception was taken.

When the jury came in with their verdict, a colloquy ensued between them and the court in regard to it. Although what occurred then has been made the subject of exception, and one of the assignments of error before us is founded on that exception, we must regard the matter as too trivial for further notice by us.

The verdict was entered in favor of the plaintiff for the possession of the property claimed by him and one cent damages; and thereupon there was judgment. From this judgment the defendant has appealed.

There are eleven assignments of error, which, in view of the criticism upon them and for greater facility in the disposal of them, we may set forth in full. The court below erred, it is said:

"1. In admitting the several items of evidence referred to in respect of said pencil numbers of said lots and in denying defendant's motion in respect of the same.

"2. In admitting in evidence said De Kraft plat book.

"3. In admitting in evidence the alleged subdivision of said square.

"4. In granting said instruction to the jury prayed by the plaintiff.

"5. In repeating said instruction in the charge to the jury.

"6. In not granting defendant's prayer No. 8, that upon the whole evidence the verdict of the jury should be for the defendant.

"7. In denying each of said instructions prayed by the defendant.

"8. In allowing the jury to take with them into the jury-room the first amended declaration, as appears from the exception on page 155 of the printed record.

"9. In instructing the jury to include in their verdict, if for the plaintiff, one cent damages, as appears by the exception on page 155 of the printed record.

"10. In refusing to enter the verdict as first rendered by the foreman of the jury, without any addition or explanation, and in directing that the verdict be recorded as if it had originally been rendered by the foreman, in favor of the plaintiff for the interest claimed in the second amended declaration, and one cent damages, as appears by the exceptions on page 156 of the printed record.

"11. The judgment below should be reversed because of the unauthorized utterances by counsel in the presence of the jury during the trial of the cause, as appears from the exceptions on pages 137, 142, 143, 144, 145, 148, 150 and 151 of the printed record."

Certainly the criticism is just that some of these assignments of error are irrelevant, some are too indefinite to serve the purpose for which assignments of error are intended, and some are frivolous. In the last category are those numbered eight, nine and ten. In regard to the matters therein stated the law is now too well settled and too elementary to allow them to be made the subjects of consideration by an appellate tribunal. Moreover, there is no foundation in the record for the eighth assignment; the objection of the defendant was to the allowance to the jury to take the second amended declaration, not the first. There was no objection made to their taking the latter paper.

The first, second and third assignments are irrelevant. The subject-matter of them has practically passed out of the case. The jury were instructed not to give it any consideration. Even if the testimony in regard to the enumeration of the lots and to pencil numbers and ink numbers, was incompetent to prove title in the plaintiff, it was certainly competent in order to throw light upon the conditions under which the parties in interest took possession; and the jury were told that for this purpose alone they might consider it. Plainly there was no error in this.

The fifth assignment is no more than a repetition of the fourth.

The sixth and seventh assignments are founded upon the refusal of the trial court to give to the jury the eight instructions requested by the defendant, or any of them. But so far as these instructions have reference to the question of the designation of the lots by pencil numbers or by ink numbers, what we have said about the first, second, and third assignments of error will suffice to
170 dispose of them. Even if the premises of these instructions were granted, it would not necessarily follow that a verdict should then be directed for the defendant; and they are on that ground, if for no other, untenable and vicious. So far as these instructions involve merely the negation of the proposition contained in the instruction given to the jury at the instance of the plaintiff, they may be considered in connection with the fourth assignment.

There are, therefore, only two assignments of error, the fourth

and the eleventh, that require any consideration by us; and of these the eleventh does not seem to demand very serious or grave consideration.

This eleventh assignment is founded upon exceptions taken on behalf of the defendant to the allowance by the court of certain remarks used by the counsel for the plaintiff in argument to the jury, or to the court in the presence of the jury. It is certainly in the interest of justice that the rights of parties should not be unduly prejudiced in argument by intemperate or improper language on the part of opposing counsel; and the Supreme Court of the United States, in the case of Waldron *v.* Waldron, 156 U. S., 361, took occasion to condemn the use of such language so far as to reverse a judgment which might have been influenced thereby. But we fail to find any such intemperate or improper use of language in the present case. It does not seem to us that counsel here unduly exceeded the proper limit of argument in their comments.

After all, the principal question in the case and, as we apprehend, the only question is that which is raised by the instruction given to the jury at the instance of the plaintiff, and which forms the subject of the appellant's fourth assignment of error. That question is, whether, in a suit in ejectment, a plaintiff, who has been peaceably in possession of property, under a claim of title, for a period of time even less than twenty years, when the possession has never been voluntarily abandoned or relinquished, is entitled to prevail against a mere trespasser who subsequently enters, but shows no lawful right or title, or claim of title, in himself. And that question, it seems to us, has been conclusively determined in the affirmative for this jurisdiction by the decision of the Supreme Court of the United States in the case of Sabariego *v.* Maverick, 124 U. S., 296.

That case came up from the State of Texas, and was an action of trespass to try title, the equivalent in that State of the action of ejectment. The plaintiff in the action there, as here, relied in the first instance upon a supposed record title; but the proof was insufficient, and reliance was sought to be had on a previous peaceable possession as against a subsequent possession without right. In support of this position the Spanish-American law was cited, as well as our common law. From the former the court cited the following provision:

"If a thing belonging to another person is sold to two persons at different times, he who took possession first has the better right to it, always reserving the right of the true owner. Consequently, color of title, coupled with possession, gives to the vendee a real right against every one except the owner; and therefore it is not lawful for third parties to impugn the title, thus exercising the right reserved alone to the owner or his successor."

Thereupon the Supreme Court proceeded further to say:

"This is also the rule of the common law as declared by this court in the case of Christy *v.* Scott, 14 How., 282, where it was applied to a case from Texas arising under a Mexican title. The court, speaking by Mr. Justice Curtis (p. 292), said: 'According to

the settled principles of the common law, this is not a defense to the action. The plaintiff says that he was seized in fee, and the defendant ejected him from the possession. The defendant, not denying this, answers that, if the plaintiff had any paper title, it was under a certain grant which was not valid. He shows no title whatever in himself. But a mere intruder cannot enter upon a person actually seized and eject him, and then question his title or set up an outstanding title in another. The maxim that the plaintiff must recover on the strength of his own title, and not on the weakness of the defendant's, is applicable to all actions for the recovery of property. But if the plaintiff had actual prior possession of the land, this is strong enough to enable him to recover it from a mere trespasser who entered without any title. He may do so by a writ of entry, where that remedy is still practiced (Jackson *v.* Boston and Worcester Railroad, 1 Cush. (Mass.), 575); or by an ejectment (Allen *v.* Rivington, 2 Saund., 111; Doe *v.* Read, 8 East, 356; Doe *v.* Dyboll, 1 Moo. & M., 346; Jackson *v.* Hazen, 2 Johns. (N. Y.), 438; Whitney *v.* Wright, 15 Wend. (N. Y.), 171); or he may maintain trespass (Catteris *v.* Cowper, 4 Taunton, 548; Graham *v.* Peat, 1 East, 246). Nor is there anything in the form of the remedy in Texas which renders these principles inapplicable to this case.'

"This rule is founded upon the presumption that every possession peaceably acquired is lawful, and is sustained by the policy of protecting the public peace against violence and disorder. But as it is intended to prevent and redress trespasses and wrongs, it is limited to cases where the defendants are trespassers and wrongdoers. It is, therefore, qualified in its application by the circumstances which constitute the origin of the adverse possession, and the character of the claim on which it is defended. It does not extend to cases where the defendant has acquired the possession peaceably, and in good faith, under color of title. Lessee of Fowler *v.* Whitemen, 2 Ohio St., 270; Drew *v.* Swift, 46 N. Y., 204. And in the language of the supreme court of Texas in Wilson *v.* Palmer, 18 Texas, 592, 595: 'The evidence must show a continuous possession, or at least that it was not abandoned, to entitle a plaintiff to recover merely by virtue of such possession.' That is to say, the defendant's possession is in the first instance presumed to be rightful. To overcome that presumption the plaintiff, showing no better right by a title regularly deduced, is bound to prove that, being himself in prior possession, he was deprived of it by a wrongful intrusion by the defendant, whose possession, therefore, originated in a trespass.

This implies that the prior possession relied on by the plaintiff
171 must have continued until it was lost by the wrongful act of the defendant in dispossessing him. If the plaintiff cannot show an actual possession, and a wrongful dispossession by the defendant, but claims a constructive possession, he must still show the facts amounting to such constructive possession. If the lands, when entered upon by the defendant, were apparently vacant and actually unoccupied, and the plaintiff merely proves an antecedent possession at some prior time, he must go farther and show that his

actual possession was not abandoned; otherwise he cannot be said to have had even a constructive possession.

"To the same effect are the cases of Jackson *v.* Walker, 7 Cowen, 637; Jackson *v.* Denn, 5 Cowen, 200. In Smith *v.* Lorillard, 10 Johns., 338, 356, Kent, chief justice, said: 'A prior possession short of twenty years, under a claim or assertion of right, will prevail over a subsequent possession of less than twenty years, when no other evidence of title appears on either side. There are many decisions of this court which look to this point. Jackson *v.* Hazen, 2 Johns., 22; Jackson *v.* Myers, 3 Johns., 388; Jackson *v.* Harder, 4 Johns., 202. It is, however, to be understood in the cases to which this rule of evidence applies, that the prior possession of the plaintiff had not been voluntarily relinquished without the *animus revertendi* (as is frequentiy the case with possessions taken by squatters) and that the subsequent possession of the defendants was acquired by mere entry, without any lawful right. That the first possession should in such cases be the better evidence of right seems to be the just and necessary inference of law. The ejectment is a possessory action, and possession is always presumption of right; and it stands good until other and stronger evidence destroys that presumption. This presumption of right every possessor of land has in the first instance; and after a continued possession for twenty years under pretense or claim of right, the actual possession ripens into a right of possession which will toll an entry. But until the possession of the tenant has become so matured, it would seem to follow that, if the plaintiff shows a prior possession, and upon which the defendant entered without its having been formally abandoned as *derelict*, the presumption which arose from the tenant's possession is transferred to the prior possession of the plaintiff, and the tenant, to recall that presumption, must show a still prior possession; and so the presumption may be removed from one side to the other, *toties quoties*, until one party or the other has shown a possession which cannot be overreached, or puts an end to the doctrine of presumptions founded on mere possession by showing a regular legal title or a right of possession.'

"In Jackson *v.* Rightmyre, 16 Johns., 313, Chancellor Kent, delivering the opinion of the court of errors, speaks of the rule expressed by himself in the case of Smith *v.* Lorillard, and says that its qualifications are 'that no other evidence of title appeared on either side, and that the subsequent possession of the defendant was acquired by mere entry without any legal right.'

"It therefore appears that prior possession is sufficient to entitle a party to recover in an action of ejectment only against a mere intruder or wrongdoer, or a person subsequently entering without right. Another qualification of the rule is, that the action to regain the prior possession must be brought within a reasonable time after it has been lost. If there has been delay in bringing the suit, the *animus revertendi* must be shown and the delay satisfactorily accounted for, or the prior possessor will be deemed to have abandoned his claim to the possession. Thus in Whitney *v.* Wright, 15 Wendell, 171, it was held that where there was a prior possession of

eleven years, and then an entry by the defendants claiming under a title adverse to such possessory title, the omission to bring a suit for thirteen years, with knowledge of the adverse entry and continuance of possession under it, would authorize a jury to find an abandonment of claim by the prior possessor.

"In Jackson *v.* Denn, 5 Cowen, 200, the defendant had entered on a vacant possession, without any claim or color of title, and it was held that the plaintiff was entitled to recover on the strength of his prior possession; but the reason why the premises had been left vacant was explained by proving that the plaintiff did not know that his tenant had left the property until he found the defendant in possession.

"It follows that in cases where the proof on the part of the plaintiff does not show a possession continuous until actual dispossession by the defendant, or those under whom he claims, the burden of proof is upon the plaintiff to show that his prior possession had not been abandoned."

In view of this full and exhaustive, and for us authoritative, exposition of the law upon the precise question now before us, it would seem to be unnecessary, as well as useless, to seek elsewhere either for authority or for argument. It is of no consequence that there are decisions to be found in other jurisdictions which apply an inconsistent or contrary doctrine. The Supreme Court of the United States, in adopting the rule laid down by Chancellor Kent in the case of Smith *v.* Lorillard, has settled the question for this jurisdiction; and we have only to apply the rule.

It is very true that in the State of Maryland a very different doctrine has been adopted, and consistently adhered to, and the rule of the case of Smith *v.* Lorillard has been repudiated. Mitchell *v.* Mitchell, 1 Md., 44. And it is likewise true that the doctrine of the courts of Maryland, as expounded in the case just cited, has generally been understood to be the law of this District in reference to actions of ejectment. But whatever may have been the understanding, it must now be regarded as settled law for us, settled by the decision of the Supreme Court of the United States in the case of Sabariego *v.* Maverick, that the doctrine announced by Chancellor Kent in the case of Smith *v.* Lorillard must prevail with reference to the class of cases covered by it. That class is specific, and the rule, as we have seen, has its distinct qualifications and limitations; but it is certainly equitable and just that the peaceable occupant and possessor of property should not be put upon proof of his title by every casual intruder who trespasses upon his land. The effect of the rule is not to change the law that governs the action
172 of ejectment, but, in the interests of peace and justice, to require the intruder, or would-be intruder, to have recourse to the action of ejectment, if he has any good right or title to the land, instead of permitting him to install himself upon the land by a tortious occupation. It does not shift the burden of proof, as argued on behalf of the appellant; but it places the duty of instituting the action of ejectment where it should be placed.

Nor does the rule contravene the general principle, that the plain-

tiff in the action of ejectment must prevail, if at all, by the strength of his own case, and not by the weakness of that of the defendant. On the contrary, that principle is expressly acknowledged and reiterated by the court in the case of Sabariego *v.* Maverick, where it is stated to be no more than the general rule applicable to all cases, which requires that a plaintiff should always show at least *prima facie* right in himself, and that it is not sufficient for him to show that the defendant has no right. The *prima facie* right in cases like the present is shown by the proof of peaceable possession under a claim of ownership for a reasonable time and of the unauthorized and tortious entry by the defendant.

Under the rule, as laid down by the Supreme Court of the United States, there was sufficient testimony in this case to go to the jury to show peaceable possession of the premises in controversy by the plaintiff and those under whom he claimed under color of title and claim of ownership for many years before the entry of the defendant; there was proof of such repeated acts of ownership as to go to the jury to show the continuity of the possession, and that it had never been voluntarily relinquished or abandoned; and there was proof tending to show that the defendant was a mere trespasser who entered without right of any kind. If the defendant had in himself, or there was in those under whom he claimed, the title of George Walker supposed to be outstanding, and that title was good as to the property in controversy, it ought not to have been impossible to show it, and that title would have defeated the plaintiff's right under his prior peaceable possession and his title presumed thereunder. But the papers offered in evidence by him with reference to this Walker title proved nothing. The first of those papers in the order of time was a contract so palpably champertous that it could be allowed no validity whatever for any purpose. The recitals in the deeds were not in this case proof of the heirship which they alleged; and the deeds themselves, as they appear in the record before us, failed to connect the defendant in any manner with the premises in controversy. All this documentary evidence, therefore, was wholly irrelevant, and was ineffectual for the sole purpose for which we understand it to have been offered, that of showing that the defendant was not a mere trespasser without claim of right or title. It does not make one less a trespasser that some one else with whom he fails to connect himself may have a better title than the plaintiff. The evident inference from the doctrine maintained by the Supreme Court of the United States, and the proper inference for the peace and good order of society, is that peaceable possession under claim of title, not in any way abandoned, especially when it has extended over many years, is not to be terminated by the mere entry of some other person upon the land; and that, if such other person deems that he has good title to the land, he, and not the prior peaceful occupant, should be put to his action of ejectment.

We find no error in the action of the supreme court of the District in this case. And it necessarily follows from what has been said that the judgment of that court in the premises should be *affirmed, with costs.*

And it is so ordered.

173 THURSDAY, *April 13th, A. D.* 1899.

AARON BRADSHAW, Appellant,
vs.
NEHEMIAH B. ASHLEY. } No. 769. April Term, 1899.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE MORRIS.

April 13, 1899.

174 In the Court of Appeals of the District of Columbia, April 21, 1899.

AARON BRADSHAW, Appellant,
vs.
NEHEMIAH B. ASHLEY. } No. 769.

On motion of Mr. William John Miller, attorney for appellant, it is ordered that a writ of error to remove this cause to the Supreme Court of the United States be, and the same is hereby, allowed; that citation issue to the appellee; and the amount of supersedeas bond is hereby fixed at one thousand dollars.

M. F. MORRIS,
SETH SHEPARD,
Associate Justices.

(Endorsed:) Court of Appeals, D. C., April term, 1899. No. 769. Aaron Bradshaw, appellant, *vs.* Nehemiah B. Ashley. Order allowing writ of error to Supreme Court U. S. and fixing amount of supersedeas bond at $1,000.00. Court of Appeals, District of Columbia. Filed Apr. 22, 1899. Robert Willett, clerk.

175 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Aaron Bradshaw, appellant, and Nehemiah B. Ashley, appellee, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and pro-

ceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 22d day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

176 Know all men by these presents that we, Aaron Bradshaw, of the city of Washington, in the District of Columbia, as principal, and Jesse L. Heiskell, as surety, are held and firmly bound unto Nehemiah B. Ashley in the full and just sum of one thousand ($1,000) dollars, to be paid to the said Nehemiah B. Ashley, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between the said Aaron Bradshaw, appellant, and Nehemiah B. Ashley, a judgment was rendered against the said Aaron Bradshaw, and the said Aaron Bradshaw having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Nehemiah B. Ashley, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Aaron Bradshaw shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

AARON BRADSHAW. [SEAL.]
JESSE L. HEISKELL. [SEAL.]

Sealed and delivered in the presence of—
J. TOME WEBB,
As to Aaron Bradshaw.
WALTER H. ACKER,
As to Aaron Bradshaw.
W. J. DONNELLY,
As to J. L. Heiskell,
J. TOME WEBB,
As to Jesse L. Heiskell.

Approved by—
M. F. MORRIS,
Associate Justice Court of Appeals, D. C.

[Endorsed:] No. 769. Aaron Bradshaw, appellant, *vs.* Nehemiah B. Ashley. Bond on writ of error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed April 25, 1899. Robert Willett, clerk.

177 UNITED STATES OF AMERICA, *ss:*

To Nehemiah B. Ashley, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Aaron Bradshaw is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. F. Morris, associate justice of the Court of Appeals of the District of Columbia, this 25th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

178 [Endorsed:] 6082. Served copy of within citation on J. J. Darlington, att'y for within-named Nehemiah B. Ashley, April 25, 1899. Aulick Palmer, marshal. B. Court of Appeals, District of Columbia. Filed Apr. 29, 1899. Robert Willett, clerk.

179 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 177, inclusive, contain a full, true, and correct copy of the transcript of record and proceedings of said Court of Appeals in the case of Aaron Bradshaw, appellant, *vs.* Nehemiah B. Ashley, No. 769, April term, 1899, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 15th day of May, A. D. 1899.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No., 17,413. District of Columbia Court of Appeals. Term No., 299. Aaron Bradshaw, plaintiff in error, *vs.* Nehemiah B. Ashley. Filed May 19th, 1899.

Off. Supreme Court U.S.
FILED
OCT 15 1900
JAMES H. McKENNEY,
Clerk.

No. 60.

Brf. of Mattingly, Miller & Ridout for P. E.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Oct. 15, 1900.

No. 60.

AARON BRADSHAW, PLAINTIFF IN ERROR,

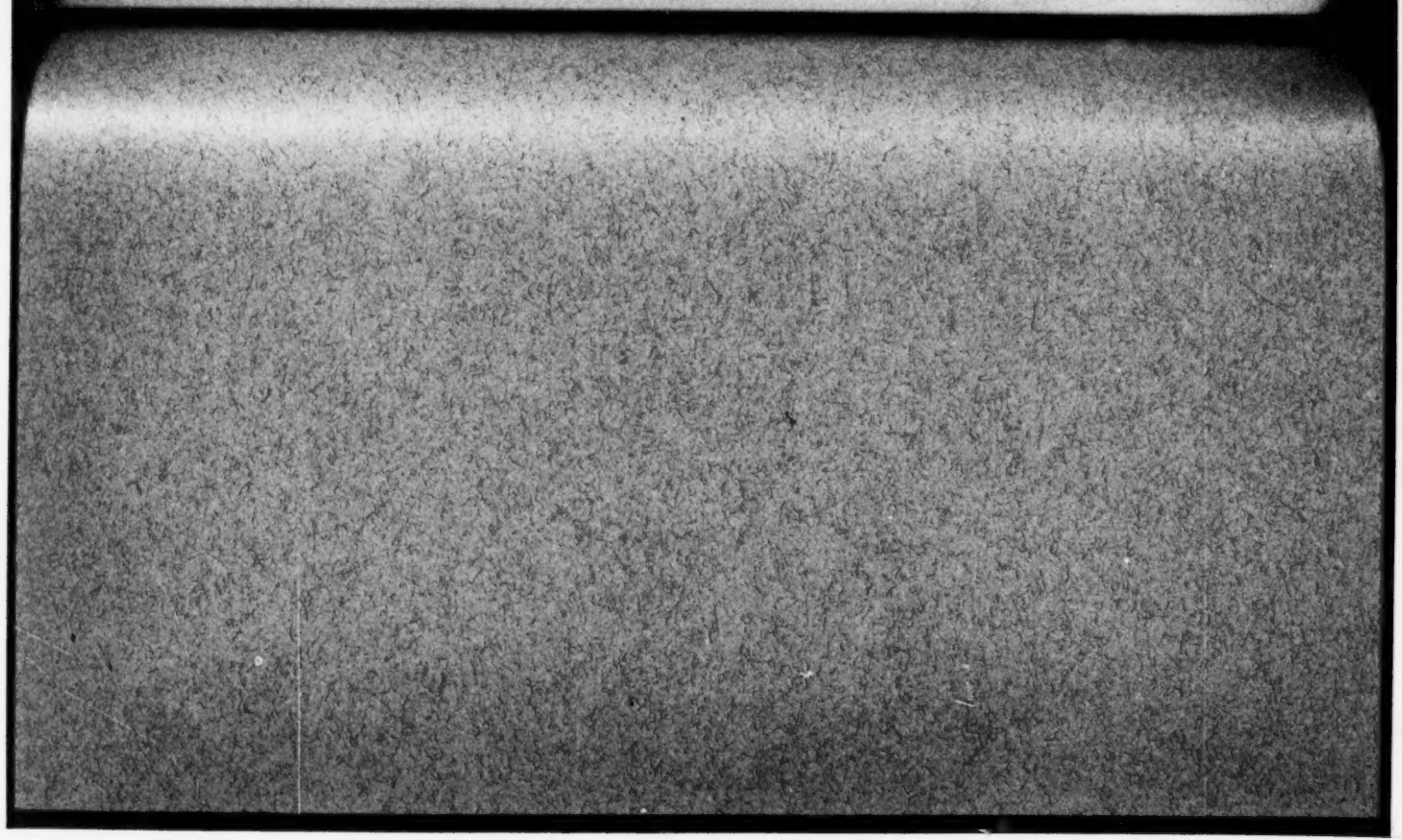
vs.

NEHEMIAH B. ASHLEY.

BRIEF FOR PLAINTIFF IN ERROR.

WM. F. MATTINGLY,
WM. JNO. MILLER,
JOHN RIDOUT,
Attorneys for Plaintiff in Error.

LAW REPORTER PRINT.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 60.

AARON BRADSHAW, PLAINTIFF IN ERROR,

vs.

NEHEMIAH B. ASHLEY.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This was an action of ejectment brought by Ashley *vs.* Bradshaw, in which three declarations were filed, as follows:

Declarations.

Original, filed October 13, 1891.

> To recover an undivided one-fifth of a certain parcel of land in the city of Washington "*known as original lot one in square numbered 939, according to the plan or plat of said city,* and otherwise known and designated as lot numbered 4 in said Square 939, according to the subdivision of said square recorded in Liber C. R. B. at folio 41 of the records of the Surveyor's office of the District of Columbia, said lot being bounded as follows," viz: giving the metes and bounds of which the plaintiff was lawfully possessed on the 27th day of March, A. D. 1891, when the defendant entered the same and unlawfully ejected the plaintiff. Plaintiff claims in fee simple.

Amended declaration, filed March 11, 1893.

To recover an undivided one-fifth of each of *original Lots 20, 1, 2, and 3, in Square 939, according to the plan or plat of said city*, and otherwise known as Lots 3, 4, 5, and 6 in said square, according to the subdivision, etc., same as in original. Claims in fee simple.

Entry and ouster alleged on March 27, 1891.

Second amended declaration, filed October 26, 1896.

1st count. To recover an undivided one-fifth of certain parcels of land sometimes designated and described as Lots 1, 2, and 3 in Square 939, and also sometimes designated and described as Lots 4, 5, and 6 in said square, according to a *so-called subdivision* thereof recorded in Liber C. H. B., folio 41, of the records of the surveyor's office.

And to recover an undivided one-fourth part of that certain other parcel in said square, sometimes designated and described as Lot 20 and sometimes as Lot 3 of said so-called subdivision, the whole of said four lots being the southwest part of said square, fronting 115 feet 10¾ inches on North B street by a depth of 186 feet 2 inches fronting on East Ninth street.

Entry and ouster alleged March 27, 1889, and claims possession in fee simple.

2d count. Is for rents and profits.

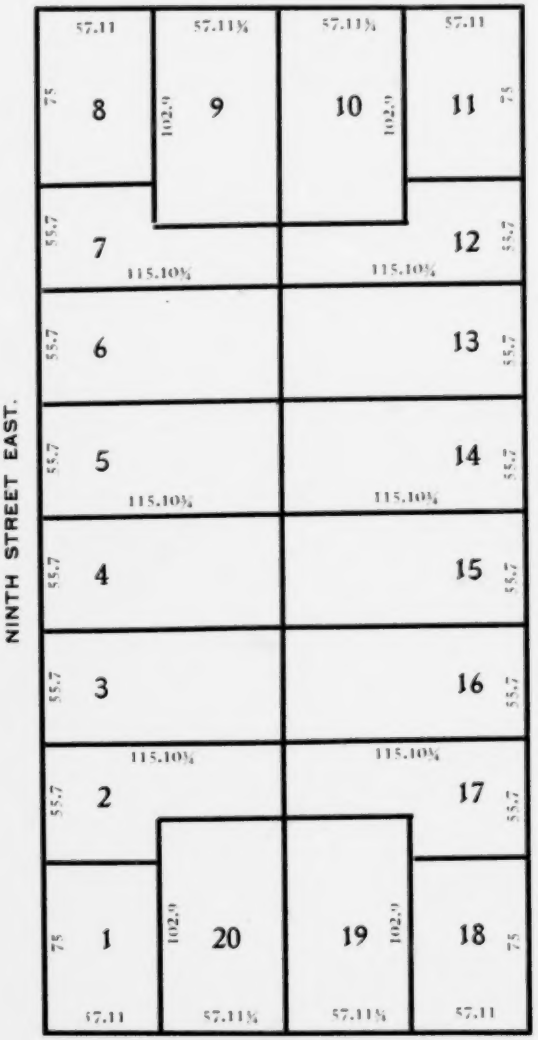
3d count. Same as the first except that the entry and ouster alleged is on November 28, 1890.

4th count. Is for rents and profits.

The original plat of Square No. 939, offered in evidence

SQUARE No. 939.

NORTH C STREET.



NINTH STREET EAST.

TENTH STREET EAST.

NORTH B STREET.

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by the plaintiff, (John Stewart, witness, R. pp. 7 to 15 inc.) appears on opposite page.

Under the certificate of division between the United States and George Walker, original proprietor, Lots 1, 2, 3, 10, 11, 12, 13, 14, 15 and 20 remain to said George Walker, and Lots 4, 5, 6, 7, 8, 9, 16, 17, 18, 19 go to the United States (R., 7, 8). On this plat there also appeared pencil numbers beginning at the southeast corner of the square; pencil No. 1 being Lot 18, No. 2 Lot 19, and so on.

The admissibility of the pencil numbers on the plat was objected to (R. 9) for reasons stated, and—

> "it was then stated by the court, with the acquiescence of counsel on both sides, that everything relating to pencil numbers should go in, subject to the same objection and exception, without repetition of the same."

The pencil numbers were essential to the plaintiff, in the deraignment of his alleged record title.

Pencil Numbers.

The plaintiff, claiming a record title under the pencil numbers, offered and had admitted in evidence under the objections and exceptions reserved by the defendant (R. 9), the following: The original certificate and the record of the division between the United States and the original proprietor of Square 939, October 13, 1792, showing the ink numbers of the lots beginning at the southwest corner of the square and pencil numbers beginning at the southeast corner of the square (R. 7, 8).

JOHN STEWART, assistant to the officer in charge of the records, testified (R. 7 *et seq.*) that he did not know how or when the pencil numbers came on these records; that he had rubbed them off, and, at the instance of one of the counsel for the plaintiff and by direction of Col. Wilson,

then in charge, had restored them, appending an affidavit explaining the circumstances. That certain lots in square 939 on this plat in Register of Squares No. 2, are enclosed with pinkish lines. That indicates that the lots within the shading were sold by the United States. The same thing appears on the other squares on the register invariably when they were sold. In Square 939 the lots enclosed in pink shading are ink Lots 4, 5, 6, 7, 8, 9, 16, 17, 18 and 19.

The plat of Square 749 (R. 12), the certificate of division, September 27, 1797, showing that the whole square went to the United States. The pink tinging includes the whole square. Throughout this book, where property was allotted the United States on the division of squares, the lots that went to the Government are enclosed within these colored lines.

That in 1852 (R. 11) plats of the squares and lots of the city of Washington were printed pursuant to resolutions of the Senate of the United States. Square 939 in this Senate book (R. 13) shows that Lot 1 is at the southwest corner. Throughout these books, registers numbered 1, 2 and 3, the statement as to the division of numbers of the lots and squares is in ink in every case. There are other squares where in the original division Lot 1 is not at the southeast corner. (Ex. B., R. 156). In Squares 825 and 776 the shade was put on the wrong side.

Sections 472 and 473, Rev. St. D. C. (original act, 1809), declaring that the office of the Surveyor of the District is the legal office of the record of the plats of all property in

the city of Washington, and all records of the division of squares and lots between the public and original proprietors; and that all records of the division of squares and lots heretofore made between the public and original proprietors shall be kept in the office of the Surveyor of the City (R. 15).

JAMES H. FORSYTH (R. 16) clerk in the office of the Surveyor, Wm. Forsyth, his father, off and on since 1858, continuously since 1881:

From the books of the office have become familiar with the signatures of the different surveyors. According to the records, De Kraft was surveyor in 1822, and for possibly eight or ten years thereafter. There are four books in the office which have been treated by examiners of titles as the original records of the division of property in the different squares in the city. Have here record of Square No. 3 from the surveyor's office. It has been in his office since 1855, when I went there. It is marked on the outside "Records of Squares," then the figure 3, and then 650–975. On page 939 is the record of Square 939. Does not know that these records in the surveyor's office are simply copies of the original reports in the office of the Commissioner of Public Buildings and Grounds. I know there has been correspondence between my father, the surveyor, and the chief of engineers, in which my father has claimed that his office is legally entitled to the original records which are in the office of the Chief of Engineers. Of my own knowledge, I don't know that these records in the Surveyor's Office are mere copies. The first time my attention was called to the fact that there were two sets of numbers, pencil and ink, on this square, was at the last trial of this case. Can't say whether or not they have been there all the time. The record of Square 749, on page 749, was then read in

evidence and exhibited to the jury (R. 18), showing Lot 1 in southeast corner.

There is a book in the surveyor's office which contains several squares purporting to be made by Mr. De Kraft. The book identified. In my opinion the whole of the writing and lettering in regard to Square 939 was done by De Kraft. Square 939 in the De Kraft book offered in evidence, showing the square to be upside down and Lot 1 at southeast corner (R. 19). Also Square 749 upside down and Lot 1 at southeast corner. Everybody has access to the records of squares in the surveyor's office. Anybody might put pencil numbers on any of those squares while we were engaged in something else. The De Kraft book was consulted sometimes by examiners of titles. There might be a difference in distance and figures; there might be a doubt, and I have shown the De Kraft book in cases of that kind. I would show it when asked for in such cases (R. 19). Ordinarily the examiners would consult the original book.

The message of James H. Blake, Mayor, to the Board of Aldermen and Common Council, dated October 8, 1816. (R. 21). Which shows that there was at that time a Public Surveyor as well as a Surveyor of the Corporation, and recommending an appropriation not exceeding $300 for the purpose of procuring a book of squares for the City Surveyor. A resolution, (October 12, 1816), of the Board of Aldermen and Common Council directing the Mayor to employ some skillful and competent person to make a copy of the squares and lots of this city.

Another resolution, (March 21, 1817), authorizing the

Mayor to advance to Cornelius F. De Kraft $200, part of the compensation for the purpose of making a copy of the squares of the city and the graduation of streets; and another resolution, (May 26, 1817), appropriating $100 for compensating Frederick Cornelius De Kraft for copying the squares and graduations of the city, to be paid on completing and delivering of the copies to the Mayor of the city.

Also a warrant, (August 14, 1818), on the Treasurer of the City of Washington, to pay F. C. DeKraft $100 for copying the squares of the city: endorsed "F. C. De Kraft." also "Bank of Washington, August 14, 1818. Pay the within Henry Whetcroft, Treasurer of the City of Washington."

JOHN STEWART recalled (R. 24).

Square 939 is recorded in Book No. 2, Register of Squares. Does not know of any Book No. 3. There are only two volumes of Registers of Squares in my office. They have not been bound since they were in the office. I don't know whether originally they were in one, two, or three volumes. Under the authority of Col. Wilson, the officer in charge of public buildings and grounds, I prepared a report showing what number of lots in the City of Washington belonged to the United States. Col. Wilson reported it to the Attorney General, who sent it to the Senate, and the Senate ordered it printed. In preparing that statement, I went over the records in the office to ascertain what property went to the Government under the original division, and what disposition had been made of it. In doing this I paid no attention to the pencil numbers or marks at all. There were a number of pencil marks on these records, which from time to time I had erased.

JAMES H. FORSYTH recalled (R. 25).

On comparing the record of Square 939 in the De Kraft book with the record of the same square in Record Book 3 of the surveyor's office, I find that the De Kraft book does not correspond with the ink numbers in the record book. Square 582 in the De Kraft book does not correspond with the same square in Record Book 2 of the surveyor's office.

That in the four records of squares in the office of the surveyor the first square in No. 3 is Square 649, folio 649; the last square is No. 975, folio 975; and that the three Registers of Squares from the office of the Commissioner of Public Buildings and Grounds, the first Square in Vol. 2 is Square 559, and the last is Square 1129; and the first in Vol. 3 is Square 1132, and the last Square South of Square 990.

JOHN STEWART recalled (R. 30).

I have with me the book showing the sales of these lots in Square 939. On pages 174–175 in this book is the following:

> "Account of sales of City lots. Current account, period 1851. July 14, by cash, received of Wm. D. Baldwin for lots numbered 4, 5, 6, 7, 8, 9, 16, 17 and 19 in Square No. 939, containing 51,855 square feet at ¼ cents per foot, $129.64."

WILLIAM FORSYTH, Surveyor of the District (R. 31).

Will be 77 years old next August. Have lived in Washington since 1850. Have been connected with the surveyor's office since the fall of 1850. Was elected Surveyor of the City in 1857. Since 1857, have been out of office twice; first time for two years and second for about four years. These four books all called Records of Squares were in the surveyor's

office when I first had any acquaintance with it. From the books I have become acquainted with the handwriting of a former surveyor named De Kraft. He was then United States Surveyor. There is a book in the office, the whole of which is in his handwriting. It has been there since 1850 or 1854. Have no knowledge when the pencil or ink numbers in Square 939 were put in the Records of Squares in my office. The four books entitled Records of Squares, numbered 1, 2, 3 and 4, show the different squares comprising the city of Washington only. I do not know where they came from, nor whether they are copies from the originals in the office of the Commissioner of Public Buildings and Grounds. I have no information on that subject. *In exercising the duties of my office, I have never paid any attention to the pencil figures on Square 939.*

Record Evidence.

The record of the chancery suit in Maryland, Thomas Morris et al. *vs.* James Greenleaf et al. (R. 54), showing the appointment of John Kilty and Josiah M. King, by decree of October 19, 1806, as trustees to sell Squares 777 to 1076, both inclusive, in the city of Washington. Said trustees reported the sale by them to James Davidson of Lot 18 in Square 939. Lot 18 is described as containing 4,343¼ square feet; and that Lots 4, 5, 6, 7, 8, 9, 16, 17, and 19 in Square 939 were sold by said trustees to United States Superintendent Thomas Monroe. Exhibit 5 in said proceedings shows in reference to Square 939: original proprietor, George Walker; amount of the whole, square feet 112,360; lots belonging to the commissioners on a division with the original proprietor and selected by Morris and Nicholson, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19; amount of lots, square feet, 56,180; when divided, 13th October, 1792; when recorded, 13th October, 1792.

Lot 18, Square 939. (R. 39.)

Deed from Kilty and King, trustees, to James Davidson, May 14, 1810, and mesne conveyances under Davidson to Reede Bradley, April 23, 1853.

Reede Bradley to Elijah H. Eakle, dated November 15, 1855, conveying the south half of said Lot 18 as laid down, numbered and described on the ground plat or plan of the City of Washington.

MARY F. EAKLE (R. 39), witness for plaintiff, gave evidence to prove she was the widow of Elijah H. Eakle. That the wife of Reede Bradley is her sister. That Reede Bradley built a house on the north half of pencil Lot No. 18, and that in 1856 her husband built adjoining the Bradley house, on the south half of the lot. That Bradley moved into his house in the fall of 1853. I never heard the lot called 15 until 1865 or 1866. In 1892 I conveyed Lot 18 to Mr. Slater. He said he had a title from the Walker estate to the land where I was. He called it 15. Said he wanted the corner lot down there, and that my record title was for that lot. He gave me $1,200 and a deed for Lot 15 for a quitclaim deed of my title to Lot 18. I told him I never claimed that lot. John Chester and Mr. Slater both gave me a quitclaim deed to Lot 15.

The plaintiff, in further attempting to show a record title, offered and had admitted in evidence the following deeds, to the admissibility of each of which exception was taken (R. 42):

1809, March 10. John Kilty and Josiah W. King, Trustees, to Thomas Munroe, United States Superintendent. Lots 4, 5, 6, 7, 8, 9, 16, 17 and 19, Square

939. (Lot 18 had been previously sold and conveyed to Davidson.)

1851, July 14. United States to William T. Baldwin. Same lots.

1856, February 13. William T. Baldwin to Christopher Ingle. Same lots, in trust for Mary Baldwin, etc., and to sell and convey, at her written request, to whomsoever she may designate.

1872. Christopher Ingle and Mary Baldwin to Joseph R. Ashley. Lots 4, 5, 6, 7, 8, and 9, Square 939.

Parol evidence was given tending to prove the death of Joseph R. Ashley and that the plaintiff was one of five heirs at law.

Tax Title.

The following record evidence was also offered by the plaintiff over the defendant's several objections and exception taken. R., 26 *et seq.*):

1822. August 10, deed from the corporation of Washington to William Brent of Lots 1, 2, 3, 10, 11, 12, 13, 14, 15 and 20, sold for nonpayment of taxes.

By mesne conveyance this tax title to Lots 13, 14, and 15, in 1827, vested in William Lowe; in 1833, in Martha A. Austin and Jane Lowe; in 1838, Lots 10, 11, and 12, in John A. Smith; in 1846, Lots 10 to 15, in Martha A. Austin; in 1859, in John Hardy, trustee, and in 1872 Hardy conveyed to John Chester.

Parol evidence was introduced by plaintiff tending to show that the Lowes and Smiths under the conveyances entered into possession of the six penciled numbered Lots 10 to 15 at the north end of the square.

Lots 1, 2, 3, and 20 under this tax deed remained in William Brent. In 1844 William Brent conveyed Lo. 3 to John Carroll Brent.

Plaintiff introduced, under objection and exception (R., 37), the record in Equity cause No. 738; Chancery rules No. 5; bill filed March 31, 1851, showing, in substance, that Wm. Brent died in 1848 seized, as was claimed, of certain real estate, including Lots 1, 2, and 20, Square 939, leaving surviving his widow and certain named heirs at law; decree of June 29, 1851, appointing John Carroll Brent trustee to make sale of the real estate, and the ratification in 1875 of sale made by him of Lot 1, Square 939, described in his report *as situated at the northwest corner of B and Tenth streets*, to Margaret Murphy.

Also, the records in Equity causes 5632 and 6469, proceeding for partition in 1879 among the Brent heirs, in which Lot 20, *fronting on Tenth street*, was assigned to Mrs. Virginia Chilton, *nee* Brent, and that Lot 2, *fronting on B street*, was subdivided into Lots A, B and C, of which Lot A was assigned to Emily Brent, and Lots B and C to Clementina Brent.

It will be observed that these proceedings treated the lots as referring to the pencil numbers.

By deeds offered in evidence (R. 28), from heirs at law of Wm. Brent, dated in 1850, 1853 and 1867, the tax title to Lots 1, 2 and 20, became vested in Elizabeth Brent, under whose will, dated July 10, 1861, probated April 11, 1863, Charles E. Brent and Francis N. Brent took as devisees Lots 1, 2 and 20.

Deed dated August 6, 1868, from John Carroll Brent to Morris Downs of "lot or piece of ground situated in said city of Washington known on the plat thereof as Lot number 3, in Square 939." (R. 52).

Deed dated June 5, 1879, from Morris Downs to Robert C. Campbell, of Lot 3, fronting 57 feet 11¼ inches on B street, by 102 feet 9 inches in depth.

This was an attempt to change Lot 3, ink number, to Lot 3, pencil number.

Deed dated September 5, 1881, from Robert C. Campbell to Morris Downs. Lot 3 described as above.

Deed dated October 28, 1881, from Morris Downs to James A. Ashley, Nehemiah B. Ashley, Sarah E. Beardsley and Mary A. Breckenridge. Lot 3. No particular description.

Record of subdivision by Clementina Brent and Emily Brent (R., 61) of Lots A, B, and C into Sublots 27, 28, and 29, the latter being the west 17 feet 11¼ inches of Lot 2, and Lots 27 and 28 having each a frontage of 20 feet on B street.

Deed dated November 24, 1881, from Clementina Brent to Morris Downs of Sublot 28.

Tax Books of the Corporation of Washington.

(R., 69–77.)

These cover the years from 1826 to 1892. In 1826 Lots 1, 2, 3, 10 to 15 and 20 are assessed to Wm. Brent.

In 1846 Lot 3 is assessed to John Carroll Brent, and so continued until 1880.

In 1852 Lots 4 to 9, 16, 17 and 19 are assessed for the first time in the name of Wm. T. Baldwin.

In 1857 they are in the name of Christopher Ingle, trustee, and so continue through 1873.

In 1874, Lots 4, 5, 6, 7, 8 and 9 are assessed in the name of Joseph R. Ashley, and so remain through 1892.

The book for 1833 shows $500 for improvement opposite Lot 15.

In 1873 there is an improvement of $700 on Lot 3, which continued until 1882.

The general assessment books (R., 104–110), from 1802 to 1849, show the area in square feet of each lot corresponding to the ink numbers and areas. On the book for 1849, pencil areas are placed opposite the ink areas and in the next general assessment book, which was in 1854 (being made out every five years), shows square footage corresponding to the pencil changes on the other book. These books show the assessment to George Walker and the public and the respective lots allotted to each on the original division, with the number of square feet in each lot. Lot 18, 4,343¾ square feet, is assessed to James Davidson.

An alleged lease from Christopher Ingle, trustee, and Mary Baldwin, to Morris Downs (R., 36), of all that piece or parcel of land designated on the plat of said city as part of Lot 4 (what part not stated), in Square 939.

The Record from the Surveyor's Office of an Attempted Subdivision of Square 939 in Subdivision Book C. H. B. No. 1. (R. 57, 133, 134.)

Made in May, 1869, by some of the owners in order to

change the numbers of the several lots to correspond to the pencil numbers. There is no seal of the surveyor attached and this record was admitted in evidence under objection and exception on the proof of the signatures of John Carroll Brent and the two witnesses, Morgan and Chase.

Parol Evidence Introduced by Plaintiff.

Plaintiff offered considerable parol evidence in a vain attempt to show adverse possession in him and those under whom he claimed of the lots in controversy. This eventually became immaterial, *as claim of title by adverse possession was abandoned.*

He also introduced parol evidence tending to show an entry into possession and claim of title by other parties, of lots in different parts of the square according to the pencil numbers.

Plaintiff's Evidence Relative to Defendant's Possession.

MORRIS A. DOWNS (R., 55). Prior to 1890, Bradshaw had not possession of any part of that square. In 1890 Mr. Ashley came out one morning and knocked the fence down. I saw Mr. Bradshaw directing the putting up of that fence. Some little time after Mr. Ashley removed the fence. Mr. Bradshaw put a house on the corner of Ninth and B, which it took him two days to build, a little one-story house. The wire fence that Bradshaw put up in 1890 started at the corner of Ninth and ran up B street, within 17 feet of our present lot. It ran up Ninth street about, I should say, 150 feet, and then eastward, and ran from B street north, making a full enclosure. I saw Bradshaw directing where to put posts, etc.; he was superintending the job. It must have been a year and a half or two years after that, I guess,

before Mr. Ashley tore that fence down. Bradshaw afterwards put up a closed board fence, enclosing the place, around the same place where he had his wire fence. This was about 1893 or 1894.

JAMES A. ASHLEY (R., 61). On account of something I had heard, I went out to these lots on March 28, 1889, and found some posts and wires enclosing all that portion below the north line of Lot 6 pencil number. We gradually demolished that fence. That was February 21, 1890. Mr. Bradshaw was there and protested against it. I saw Bradshaw again in August, 1891. I demanded possession of him of that ground which was enclosed. He replied that his only connection with it was as lessee of Mr. Walter. Then I told him that it was as lessee and as the representative of Mr. Walter that we demanded possession, I and my associates, and he replied, "Of necessity, I refuse." I am referring to all the lots that were enclosed, 3, 4, 5 and 6. He had possession of all four of them. After I broke the fence down the property remained unenclosed a few days.

Plaintiff's Evidence of Acts of Ownership Over the Property in Question.

This is the testimony of James A. Ashley (R. 60, 61), and it is as follows:

> "Q. Mr. Ashley, what lots, if any, did your brother take possession of after this conveyance to him of Ingle and Mrs. Baldwin?
>
> "A. There were certain lots on Ninth street, beginning at the southwest corner of the square and running northward on that street. At that time there was a fence running east and west and along the northern border of the purchase which he said he had made; that fence, to the best of my recollec-

tion, extending back the depth of the lot. It was a post and rail fence. On the two northerly lots of which my brother took possession there were habitations—cheap structures, occupied by tenants, from whom my brother collected rent to his death, when I collected rents afterwards. The most northern of these two houses was occupied by Margaret Walker first and by Thomas Johnson afterwards. There was a double cabin near the line between Lots 8 and 9, which, I think, was astride the line, and that was occupied by Anthony A. Henry and others, and the most southerly one was occupied by Dennis Harrison. There was a more pretentious house, the largest of the three; collected rents of those tenants as late as May, 1889, I think. My brother died in March, and I went out there first in April following. I went out with him sometimes when he collected rents and saw money paid to him. As to other acts of ownership exercised over the ground after my brother bought from Mrs. Baldwin and others, he collected some small sums of money sometimes for sod. Harrison also made an allowance for the use of the lot south of his, where he pastured some cows. The sod was taken from the lots not occupied by the cabins—those extending from number 8 down to Ninth and B streets. We sold the sod to a man named Briscoe. The right of pasturage which we gave Harrison for a consideration covered all the sod from number 8 down to B street, the same lots from which we sold the sod. The right of pasturage was given to Harrison up to the time the sods were sold, which was in 1886. As to how early we gave him that right, I can not fix that date exactly. Harrison had the right of pasturage for several years prior to 1886. He pastured his cattle mainly out on the commons, and morning and evening he would allow the cattle to graze on those lots; I have seen them there."

Defendant introduced evidence tending to show that after the Downs house was removed he had loads of sand and stone piled on the southwest corner of the square; in rebuttal of this plaintiff introduced the following evidence (R. 135):

MORRIS A. DOWNS recalled:

> "As to the testimony in this case about loads of sand and stone being piled on the corner lot of Ninth and B streets—the southwest corner of Square 939—about the time that our house was moved over on Lot 2, nothing at all has been on that lot since the time our house was moved until it was fenced in by Mr. Bradshaw. I have lived there all the time. I am twenty-two years old, and was seven years old when our house was moved."

ELLEN F. DOWNS recalled (R. 138):

> "I never saw any sand or stone stored at the corner of Ninth and B before the wire fence was put there; it was a vacant lot. It was vacant after the Halfway house was moved and after our house was moved—after we sold to Mr. Ashley and moved the house from Lot 3 to Lot 2 it remained vacant and they played ball on it."

The sale to Ashley was in October, 1881 (R. 52), and the Downs' moved the house in 1882. (R. 64.)

The Halfway house was moved in 1869. (R. 62, 63.)

Defendant's Evidence.

The defendant introduced a mass of parol evidence tending to prove that the property in question was vacant and unoccupied for a long period of years, and that there had been no adverse possession of the same by anybody.

Also three deeds from the Ashleys, dated in October and November, 1886, conveying to different persons (R. 119) original lots 7, 8 and 9, now known as Sublots 10, 11 and 12. Plaintiff was permitted afterwards to introduce evidence tending to prove that these deeds were excuted without consideration and as a matter of courtesy and accommodation. (R. 134.)

Defendant offered to prove by Walter H. Acker, a witness on the stand, that prior to March, 1893, a loan of $20,000 had been made on the security of part of Lots 1, 2, 3 and 20, without notice of any claim now set up by plaintiff, and that with the proceeds of that loan six brick houses were built on Ninth street and on part of the property claimed in this suit; to which the plaintiff objected. The objection was sustained and exception taken. (R. 122.)

Defendant, denying that the plaintiff had made out a case, for the purpose of showing that he was not an intruder or trespasser; that he entered under claim of right, under conveyances from the heirs of George Walker, the original proprietor, gave in evidence the following:

The division between George Walker, the original proprietor, and the United States, of Square 939, made October 13th, 1792, showing that Lots 1, 2, 3, 10 to 15, and 20 were to remain in George Walker, and Lots 4 to 9 and 16 to 19 were allotted to the United States. (R. 124.)

Also, the records of a number of deeds from numerous grantors, reciting their relationship to George Walker, executed in Great Britain in 1889 and 1890, whereby they conveyed unto John H. Walter said Lots 1, 2, 3, 10 to 15 and 20, and other lots and squares.

Also the proceedings in Equity cause No. 12,676, John H. Walter *vs.* Ralph Walker et al. (remaining heirs of George Walker), for sale, to make partition of said lots, decree for sale, John Ridout, trustee, his report of sale, and final ratification. (R. 126.)

Also, deed from John Ridout, trustee, to John H. Walter, dated March 12, 1891, of Lots 1, 2, 3, and 20.

Deed from John H. Walter to Mary E. Bradshaw, September 6, 1892, of Lots 40, 41, 42, and 48 to 53 of Walter's subdivision of said Lots 1, 2, 3, and 20.

Deed from Mary E. Bradshaw and Aaron Bradshaw, her husband, September 13, 1892, to Lydia Hoagland of said subdivision lots.

Deeds from Lydia Hoagland, September 14, 1893, to Leda M. Morse of said Sublots 41 to 53.

Deed from Leda M. Morse to Aaron Bradshaw, October 28, 1893, of said Sublots 48 to 53. (R. 127.)

Agreement between the Walker heirs and J. Augustus Taylor and John H. Walter, January 31, 1889, reciting their ownership of certain real estate in the District of Columbia, that, for the purpose of converting the same into personality, they had conveyed the same to said John H. Walter, who had by deed of trust conveyed the same to John Ridout and James Lowndes to secure a note for $250,000. Said note and deed of trust are in fact to stand as security only for the net proceeds of sales after deducting compensation and outlays after referred to, and conferring certain powers upon said Taylor and Walter and providing for the disposition of proceeds from said real estate. (R. 127 *et seq.*)

Deed of release from Lowndes and Ridout, trustees, to Mary F. Bradshaw, recorded September 12, 1892, of said Sublots 40, 41, 42 and 48 to 53. (R. 131.)

The evidence of James Lowndes, that he is a member of the bar and acted as the agent and trustee of the representatives of George Walker and for James Walker. That in 1879 he made the acquaintance of a lady who claimed to be an heir of George Walker, and that, in response to a letter from her (in evidence, R. 131), of March 4, 1889, he consented to act as trustee, etc.

Three deeds of trust from John H. Walker to John Ridout and James Lowndes, each to secure J. Augustus Taylor, $100,000.

Upon the conclusion of the evidence, the defendant moved (R. 140) to strike from the record all testimony offered by the plaintiff relative to the pencil numbers or tending to show conveyance by or possession with reference to pencil numbers, which motion was denied by the court and exception taken.

Thereupon the plaintiff asked an instruction from the court, which appears on pages 140 and 141 of the Record, which was granted, and exception taken.

The defendant then asked eight separate instructions (R. 141, 142), each of which was denied and exception taken. The last of such instructions, No. 8, was, that upon all the evidence in this case their verdict should be in favor of the defendant.

The Record presents all the evidence in the case.

The charge of the court (R. 151), was simply an elaboration of the plaintiff's prayer; took from the consideration of the jury all questions as to title and left to them to decide solely as to the possession of the lots by plaintiff as set forth in the prayer granted.

The jury found for the plaintiff and the Court of Appeals affirmed the court below.

ASSIGNMENT OF ERRORS.

The court below erred:

1. In admitting the several items of evidence referred to in respect of said pencil numbers of said lots, and in denying defendant's motion in respect of the same (R. 140).

2. In admitting in evidence said De Kraft plat book.

3. In admitting in evidence the alleged subdivision of said square.

4. In granting said instruction to the jury prayed by the plaintiff.

5. In repeating said instruction in the charge to the jury.

6. In not granting defendant's prayer No. 8, that upon the whole evidence the verdict of the jury should be for the defendant.

7. In denying each of said instructions prayed by the defendant.

ARGUMENT.

The evidence as to the pencil numbers should not have been admitted by the court. The record was in ink. By whom and when the numbers in pencil were placed upon the records does not appear. Title could not be changed by numbering the lots in pencil. Conveyance of a lot by number, was of such number designated in ink on the plat, and entry upon a lot bearing the same number in pencil would not carry the title to that lot. A deed for Lot 15, would not convey Lot 18, even though it was supposed to be Lot 15.

The evidence introduced by the plaintiff shows conclusively, beyond any question or doubt, that in 1792, on the division with George Walker, the original proprietor, Lots 4 to 9, and 16 to 19, ink numbers, went to the United States, and the other lots remained in Walker. Appended to the certificate of division opposite each lot was placed the number of square feet in it. It also shows that the lots which, on the division, went to the United States were, with the exception of Lot 18, sold to William T. Baldwin, July 14, 1851. (R. 10).

The following is a copy of it:

Geo. Walker.		Public.		When Sold.	To Whom Sold.
Lots.	Sq. Feet.	Lots.	Sq. Feet.		
1	4,343¾	4	6,460		
2	4,871	5	6,460		
3	6,460	6	6,460		
10	5,955¼	7	4,871		
11	4,343¾	8	4,343¾	July 4, 1851..... Jas. Greenleaf.	Wm. T. Baldwin.
12	4,871	9	5,955¼		
13	6,460	16	6,460		
14	6,460	17	4,871		
15	6,460	18	4,343¾		
20	5,955¼	19	5,955¼	July 14, 1851.....	Wm. T. Baldwin.
	56,180		56,180		

The proceedings in the High Court of Chancery of Maryland *vs.* Greenleaf, Morris & Nicholson et al., in which Kilty and King were appointed trustees to sell (R. 54) Lot 18, Square 939 is reported as sold to James Davidson. In the schedule accompanying the report, Lot 18 is described as containing 4,343¼ square feet. Pencil number 18 is Lot 15 ink number, and contains 6,460 square feet. It further appears that the whole number of feet in the square was 112,360; and that the division was an equal one, as it was required to be, 56,180 square feet to the United States and the same number to Walker. If the United States had taken according to the pencil numbers, it would have had 60,894 square feet.

Ledger from the office of the Commissioner of Public Buildings, pp. 174, 175 (R. 30).

> "Account of sales of city lots, period 1851. July 14, By Cash received of Wm. T. Baldwin for lots numbered 4, 5, 6, 7, 8, 9, 16, 17 and 19 in Square number 939, containing 51,855 square feet, at ¼ cents per foot, $129.64."

Also the tax and assessment books of the corporation of Washington. (R. 69 *et seq.* and 104 *et seq.*)

The *plaintiff's declarations in this case* also show that the record in ink is the true one. It would be a monstrous proposition that pencil memoranda placed upon a public record could change or affect the title to property.

Plaintiff Has No Record Title.

The United States conveyed to Baldwin in 1851, Lots 4 to 9 and 16, 17 and 19, being all it owned in the square. (R. 42). Ingle, trustee, of the Baldwin Lots, in August, 1872, conveyed to Ashley lots 4, 5, 6, 7, 8 and 9, lying wholly north of the property in controversy here. This deed could not and did not convey any title to Lots 1, 2, and 3, the lots

in dispute. Yet the plaintiff, as one of the heirs of Ashley, the grantee of Ingle, trustee, has no other title and does not claim to have.

As to Lot 20. (Pencil No. 3.)

In August, 1822, the corporation of Washington conveyed to Wm. Brent, lots 1, 2, 3, 10 to 15 and 20, sold for nonpayment of taxes. (R. 26.) These lots, it will be observed, are those which under the division in 1792 remained in George Walker, original proprietor.

It was not claimed on the trial, and could not be, that this deed passed any title to the lots it purported to convey.

In 1844, Wm. Brent conveyed Lot 3 to John Carroll Brent. (P. 28).

In August, 1868, John Carroll Brent conveyed to Morris Downs—

> "lot or piece of ground situated in said city of Washington known on the plat thereof as lot number 3 in Square 929." (R. 52.)

In 1879, Downs conveyed to Campbell Lot 3, describing it as fronting on B street, and in September, 1881, Campbell reconveyed to Downs, with the same description.

In October, 1881, Downs conveyed Lot 3, Square 939, no particular description, to the Ashleys; and the plaintiff claims Lot 20 under this conveyance of Lot 3.

It is manifest that whatever title Wm. Brent got under his tax deed to Lot 3 was to Lot 3 fronting on Tenth street, and this he conveyed to John Carroll Brent, who conveyed to Downs, who conveyed to the Ashleys. Downs never was in possession of Lot 3, and the conveyance by him of Lot 3, to the Ashleys not only gave them no right to the possession of Lot 20, but gave them no right to avail themselves of his possession of Lot 20.

The Brent tax title to Lots 1, 2, and 20 appears to still

remain in some of the Brent heirs, although in the chancery proceedings referred to they are treated as pencil Lots 1, 2 and 20, at the southeast corner of the square, being Lots 17, 18 and 19, which had never been sold for taxes.

Thus this plaintiff, without any record title whatever to these Lots 1, 2, 3 and 20; without any conveyance of them from anybody even ever in possession of them; and without any claim to title by adverse possession himself, claims the right to recover the fee simple title to the property in an action of ejectment.

In all cases in which the plaintiff seeks to recover on proof of adverse possession for twenty years, or the defendant to defend on the same ground, when the possession has been held by different persons for the twenty years, it is a familiar rule that in order to tack the possessions together, there must be shown a privity of estate between them, either grantee, heir, or devisee.

Tyler on Eject., 915.
Davis *vs.* Furlow, 27 Md. 536.

In those jurisdictions where recovery is permitted on proof alone of prior possession, short of twenty years, and the plaintiff seeks to avail himself of the prior possession of another under whom he claims, he must show a valid conveyance from such party.

Plume *vs.* Seward, 4 Cal. 95.
Caldwell *vs.* Carter, 89 Am. Dec. 131.

What that claim is based upon appears from the instruction, at his instance, granted by the court. For convenience it is printed here.

Plaintiff's prayer, granted by the court. (R. 140):

> "If the jury believe from the evidence that Morris Downs took possession, in 1868, of the lot referred to in the testimony as pencil number 3, fronting on B street, under his purchase of lot 3 from John Carroll

Brent; that he held and occupied said lot as a place of residence for himself and his family exclusively, claiming it as his own, until his conveyance of the same to the plaintiff and his cograntees in 1881; that he paid rent therefor to the plaintiff and his cograntees until 1882, and that since said last-mentioned date and until the defendant entered thereon, if the jury find from the evidence that he did so enter, the plaintiff and his cograntees continued to exercise acts of exclusive ownership over the said lot, to pay taxes thereon, and to claim title thereto, and that they had never abandoned the same nor their claims to be owners thereon; and if they further find from the evidence that Tyler Baldwin and those claiming under him were in actual exclusive possession of the lots referred to in the evidence as pencil numbers 4, 5 and 6, cultivating and paying taxes thereon and claiming them as their own from the time of his purchase of lots 4, 5, 6, and others from the United States in 1851 until some time during the war, and that thereafter those claiming under him continued to claim exclusive title thereto, pay the taxes thereon, renting the same or parts thereof from time to time, sold sods therefrom, and gave their tenants permission to pasture cows thereon and that the right of pasturage so given was actually exercised by said tenants down to about the time the defendant entered upon said lots, if the jury find from the evidence that he did so enter, and that the plaintiff and others claiming under the said Baldwin have never abandoned the said lots nor their claim to be the owners thereof; and if the jury further believe from the evidence that the defendant, Aaron Bradshaw, in or about the month of March, 1889, without the knowledge or consent of the plaintiff and others claiming under the said Downs and Baldwin, entered upon the lots known as pencil numbers 3, 4, 5 and 6, and enclosed them with a fence; that he was in possession of all of said lots on the 13th day of October, 1891, when the original declaration in this cause was filed, and that he continued in possession of all of said lots until March 11, 1893, when the first amended declaration was filed and subsequently; and if the jury further believe from the

evidence that Joseph R. Ashley, the grantee in the deed from Christopher Ingle and Mary Baldwin, died intestate in 1875, and that he left as his only heirs-at-law two sisters and three brothers, of whom the plaintiff is one, then their verdict should be in favor of the plaintiff for the undivided parts of the lots in controversy claimed by him in the declaration."

This instruction relates, first, to pencil Lot 3 (Lot 20), and second, to pencil Lots 4, 5, and 6 (Lots 1, 2, 3), united in the one prayer.

First, as to Pencil Lot 3 (Lot 20).

The court in this instruction said to the jury, if Morris Downs took possession of Lot 20 in 1868, under his purchase of Lot 3 from John Carroll Brent, and occupied said lot as a residence for himself and family exclusively, claiming it as his own, "until his conveyance of the same to the plaintiff and his cograntees in 1881," (here, it will be observed that the court held as matter of law that the conveyance by Downs of Lot 3 to the Ashleys, passed whatever title he had to or interest in Lot 20); that he paid rent to his grantees, the Ashleys, until 1882, and since then and until the defendant entered, the plaintiff and his cograntees continued to exercise acts of exclusive ownership over the lot, to pay taxes thereon and claim title thereto and that they had never abandoned the same nor their claims to be owners; and that the defendant, in March, 1889, entered upon and continued in possession of the property until after March 11, 1893, then the plaintiff was entitled to recover, notwithstanding the fact that for seven years prior to the defendant's entry the lot had been vacant and unoccupied, and notwithstanding the further fact that the defendant claimed to have entered as the agent of Walter, who claimed to be the grantee of the heirs of George Walker, the original proprietor.

As to Pencil Lots 4, 5 and 6 (Lots 1, 2 and 3).

The instruction as to these is very similar to the foregoing, except that the acts of ownership are defined as from time to time selling sods and giving tenants permission to pasture cows; and, quite incidentally, that the plaintiff claims under Baldwin.

As we have seen from the testimony of James A. Ashley (R. 60, 61), after his brother acquired the Baldwin title to Lots 4, 5, 6, 7, 8 and 9, there were some small shanties or cabins on 5 and 6, from the occupants of which rents were collected, and that one Harrison, who occupied the southernmost cabin, was given the right to pasture some cows from pencil Lot 8 down to B street; this was for several years prior to 1886. In 1886 some sods were sold to a man by the name of Briscoe. After 1886 nothing at all is claimed to have been done upon the lots. There is no evidence whatever that the Ashleys ever were in actual possession of these lots. Under these circumstances the court tells the jury that such constructive possession under claim but without evidence of title is sufficient to enable the plaintiff to recover, unless the defendant proves a clear legal title in himself.

If this is the law, then it will create a radical change in legal principles heretofore supposed to control proceedings in ejectment.

This instruction was granted by the court upon the authority of Smith *vs.* Lorillard, 10 John. 337, 344, 354. The court in that case had charged the jury that the plaintiff had shown an actual and undisturbed possession for seven or eight years at least, which was sufficient to entitle him to recover, unless the defendant had shown an adverse possession of twenty years, or a subsisting title out of the lessors of the plaintiff.

In the case at bar there was not only no actual possession by the plaintiff, but the legal title was shown by him to be outstanding in George Walker or his heirs.

In some of the States a similar doctrine has been advanced. But such has never heretofore been considered the law in this District.

In this jurisdiction, except when both parties claim under a common source of title, it has always been held that the plaintiff can only recover on the strength of his own title. He must prove that at the time of suit brought he had the legal title and right of possession, and to do this must show title out of the United States.

The possession held by the defendant is presumptive evidence of a right of possession, and he can not be deprived of his possession by any other than the rightful owner.

McHenry on Eject., 115.
24 How. 398, 403; Smith *vs.* McCann.
7 G. & J., 61, 72; Medley *vs.* Williams.
11 G. & J., 358; Wilson *vs.* Inloes.
30 Md., 536, 545; Lannay *vs.* Wilson.
70 Md., 305, 318; Winter *vs.* White.
4 Md., 138, 173, 174; Hammond *vs.* Inloes.
21 How., 481; Fenn *vs.* Holme.
24 How., 423; Shierbun *vs.* Cordova.
113 U. S., 550, 555; Fussell *vs.* Gregg.
94 U. S., 773; Hogan *vs.* Kurtz.
2 Mack., 275; Anderson *vs.* Smith.
6 App. D. C., 273; Peck *vs.* Heurich.

This court has uniformly held, in all cases involving title to real estate, that the law of the State where the land lies, as evidenced by the decisions of its judicial tribunals, is a rule of property and binding upon the court.

See the opinion of the court as delivered by Chief Justice Taney in Smith *vs.* McCann, *supra.*

91 U. S. 357; Morsell *vs.* First National Bank.
136 U. S. 519; Thaw *vs.* Ritchie.
165 U. S. 566; De Vaughn *vs.* Hutchinson.

This latter case involved the application of the rule in Shelley's Case in this District. The opinion of the court, delivered by Mr. Justice Shiras, states (p. 570) as follows:

> "It is a principle firmly established that to the law of the State in which the land is situated we must look for the rules which govern its descent, alienation and transfer, and for the effect and construction of wills and other conveyances. United States *vs.* Crosby, 7 Cranch. 115; Clark *vs.* Graham, 6 Wheat. 577; McGoon *vs.* Scales, 9 Wall. 23; Brine *vs.* Insurance Co., 96 U. S. 627.
>
> "Accordingly, in the present case, we are relieved from a consideration of the innumerable cases in which the courts in England and in the several States of this Union have dealt with the origin and application of the rule in Shelley's Case. We have only to do with that famous rule as expounded and applied by the courts of Maryland while the land in question formed part of the territory of that State, and to further inquire whether, since the cession of the lands forming the District of Columbia, there has been any change in the law by legislation of Congress."

There are numerous other cases in this court to the same effect, but the principle is such a familiar one, it is deemed unnecessary to cite them.

The doctrine of Smith *vs.* Lorillard has been repudiated in Maryland: see—

1 Md., 44–52–3; Mitchell *vs.* Mitchell (1851).

In this case plaintiff did not show title out of the State, but did show adverse possession for more than 20 years, from 1817 to 1841, and admitted heirship. Defendant, claiming as heir of the half-blood, had entered, was in possession, but without right or title. Judgment in favor of defendant affirmed. The opinion states—

> "From the facts in the case, it appears that the defendant was in possession of the *locus in quo*, from

1841, to the time of the institution of the suit claiming it as the property of his son.

"The general principles of ejectment law in Maryland have been settled by a long series of unvarying decisions, and can not be disturbed by this court, however hard may be their operation in particular cases. Among these, is, that the plaintiff must recover, if at all, on the strength of his own title, and can not do so because of the weakness of that of the defendant. Another, is, that he must show that he has the *legal* title to the land, *and* a right of possession, and that he can not establish such legal right in himself, without first showing the land has been granted by the State. The cases in 2 H. & J., 125; 11 G. & J., 358, and 3 H. & J., 26, are full on these points. They merely affirm what has always been the law of Maryland.

"But it is said, that the act of 1818, ch. 90, has effected a change in some of these doctrines, at least so far as the cases which it embraces are concerned. Were it not for the act of 1818, on the evidence in the case before us, it must be admitted, the plaintiff could not recover, whatever might be his position, according to the decisions in England, and of some of our sister States, in which it has been held, that *priority* of, and greater length of possession, is all that need be shewn by the plaintiff, when the defendant relies *solely* upon a possession of a lesser duration in point of time. See 7 *Bing.*, 156; 10 *Johns.*, 356; 2 *Sergt. and Rawle*, 57."

The exceptional cases in those jurisdictions which justify a recovery on proof of prior possession, are all cases of actual, visible possession; and not where the entry of the defendant was upon vacant unoccupied land.

The Cases in this Court are the following:

Christy *vs.* Scott, 4 How. 282, 292.

This was a case of Mexican title, in which the plaintiff

in his petition averred that on a certain date he was seized in his demesne as of fee of three tracts of land, fully described in the petition by metes and bounds, and that the defendant, with force and arms, ejected him therefrom and has kept him out of possession thereof. The defendant filed an answer containing several distinct pleas, and the case came up on demurrers to these pleas.

The plea to the plaintiff's averment of seisin in fee and ouster by the defendant was, not denying this, that, if the plaintiff had any paper title, it was under a certain grant which was not valid and showed no title in the plaintiff.

This court, in holding the pleas bad on demurrer, in the course of its opinion stated, that if the plaintiff had actual prior possession of the land, this is strong enough to enable him to recover from a mere trespasser who entered without any title.

Burt *vs.* Panjaud, 99 U. S. 180.

This case came up from the Circuit Court for the Northern District of Florida. Two lots were in question. One lot had two houses on it, one of which the plaintiff occupied; the other lot was leased to a tenant. The court instructed the jury that if the plaintiff's possession had continued for *seven years*, it was sufficient to enable her to recover against a trespasser, or one showing no right to enter.

This court, in holding that there was no error in this instruction, cites the statement from 2 Greenleaf on Evidence, that either actual possession of the premises or receipt of rent is *prima facie* evidence of title in fee. The case is very briefly reported, and what the facts were does not very clearly appear. Mr. Justice Strong dissented, on the ground that the evidence of plaintiff's possession was not sufficient to raise the presumption of title.

Sabariego *vs.* Maverick, 124 U. S. 261, 296.

This was an action of trespass to try title from the Circuit Court for the Western District of Texas.

Title was shown to have been in one Losoya under a grant from the King of Spain. A deed from a board of commissioners to one Garcia, based, according to the recitals, upon a confiscation of the property of Losoya by the Spanish government in 1814. Plaintiff claimed as sole heir at law of Garcia.

Various documents and parol testimony were offered tending to show confiscation, but no decree of confiscation was offered in evidence.

The court, holding that the proofs did not show any decree or adjudication of confiscation sufficient to warrant the sale, directed a verdict for the defendants. This court affirmed the judgment, holding that the evidence of possession on the part of plaintiff, which seemed to have been from 1814 to 1835, did not satisfy the rule as stated by the authorities cited, as it did not show any evidence of possession after 1835, but left the period from 1835 to 1843, when it was alleged that the defendant entered, entirely unaccounted for.

That *actual prior possession* is necessary in New York is shown by the case of Greenleaf *vs.* Brooklyn, etc., Rwy. Co., 141 N. Y. 395, 399, in which the court says:

> "Mere payment of taxes, claim of title, assertions of ownership made even upon the land; mere words, however emphatic, do not show the *actual possession* which raises the presumption of title sufficient to maintain ejectment."

If the instruction granted by the court below is sustained, then all that the plaintiff need do in an action of ejectment is to show that at some previous time he was in the pos-

session of the property or exercised some act of ownership over it, and he will be entitled to recover unless the defendant can show a legal title to the property, no matter how rightfully he had entered. In other words, it simply reverses the rule hitherto supposed to prevail, that the plaintiff can recover solely on the strength of his own title and not on the weakness of his adversaries.

The rule applicable to cases of actual possession by the plaintiff and entry and ouster by the defendant as a trespasser have no application in this case as no such question was left to the jury. The land was conceded to have been unoccupied and vacant for several years prior to defendant's entry, and the instruction was based solely upon plaintiff's quasi-possession, which was held as matter of law sufficient to entitle him to recover, whether the defendant entered as a trespasser or wrongdoer or in good faith under a claim of right and title.

Our law provides a remedy in case of forcible entry or forcible detainer.

Rev. St. D. C., Sec. 684.

20 D. C. 317, Jennings *vs.* Webb.

119 U. S. 610, Iron Mountain & H. RR. *vs.* Johnson

While ejectment may also lie in such cases, yet it must appear to have been a forcible entry upon an actual occupation by another, or a peaceable entry and a forcible detainer of such occupation.

In the case at bar there was no evidence tending to show that the Ashleys had ever been in possession of Lots 1, 2 and 3, and the evidence as to Lot 20 (pencil number 3) was, that it had been vacant and unoccupied for seven years prior to the defendant's entry.

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It was under these circumstances that the plaintiff, who had shown that he did not hold the record legal title; that the legal title was outstanding in the Walker heirs, and that he had no title by adverse possession, was permitted to recover.

The plaintiff's own testimony (R. 61) showed that prior to March 28, 1889, the defendant had enclosed all four lots with a wire fence, and that they so remained for about one year, when the plaintiff demolished the fence, and that the defendant thereupon erected a small brick building upon the premises and took and held actual possession of the lots.

Plaintiff has shown legal title outstanding in George Walker, the original proprietor, and was therefore not entitled to recover.

It is a familiar rule of law that the defendant in ejectment can always prevent a recovery by showing the outstanding legal title to be in a stranger.

In this case the plaintiff has shown the legal title to be outstanding in George Walker or his heirs, and doesn't pretend to connect himself in any way with that title.

Even under the New York rule permitting recovery on proof of prior possession, it was on an alleged presumption of title from proof of possession, but where the actual title was shown to be outstanding in a stranger, the plaintiff could not recover.

1 Hill, 121, 128, Gillett *vs.* Stanley.
1 Hill, 130, 138, Bloom *vs.* Burdick.

The legal logic of the New York and similar cases is, that proof of possession, in the absence of evidence of title, raises a presumption of title; and the plaintiff will be en-

titled to recover, unless the defendant shows a prior possession or legal title in himself.

But in this jurisdiction there can be no presumption of title against the United States, and hence no proof of possession either for a short time or for more than twenty years will enable a plaintiff to recover unless title is shown out of the United States, in which the court takes judicial notice, the title was vested.

But when plaintiff, to meet this necessity of his case, shows title out of the United States he has shown the legal title to be in some one else, and this title thus shown can only be overcome by proof of a grant or by twenty years' adverse possession.

When a plaintiff has shown the legal title outstanding, proof of actual possession, short of twenty years, not only raises no presumption of title, but simply shows that the plaintiff himself had no right of entry.

De Kraft's Plat Book, (R. 18 to 24).

This was a plat book of the squares in the city prepared by the Surveyor, De Kraft, in 1816, under authority of the Corporation of Washington, showing that in Squares 939 and 749, Lot No. 1 in each is at the southeast corner of the square.

It ought to be sufficient to say that no plats published by direction of the municipal authorities could change or affect titles to real estate as shown by the original and authentic records relating to the different squares in the city.

The attempted Subdivision of this Square in May, 1869, C. H. B., No. 1 of the Surveyor's office. (R. 57, 134.)

This was admitted, although not made by all the owners

of lots in the square and although the certificate of the Surveyor *was not under seal.*

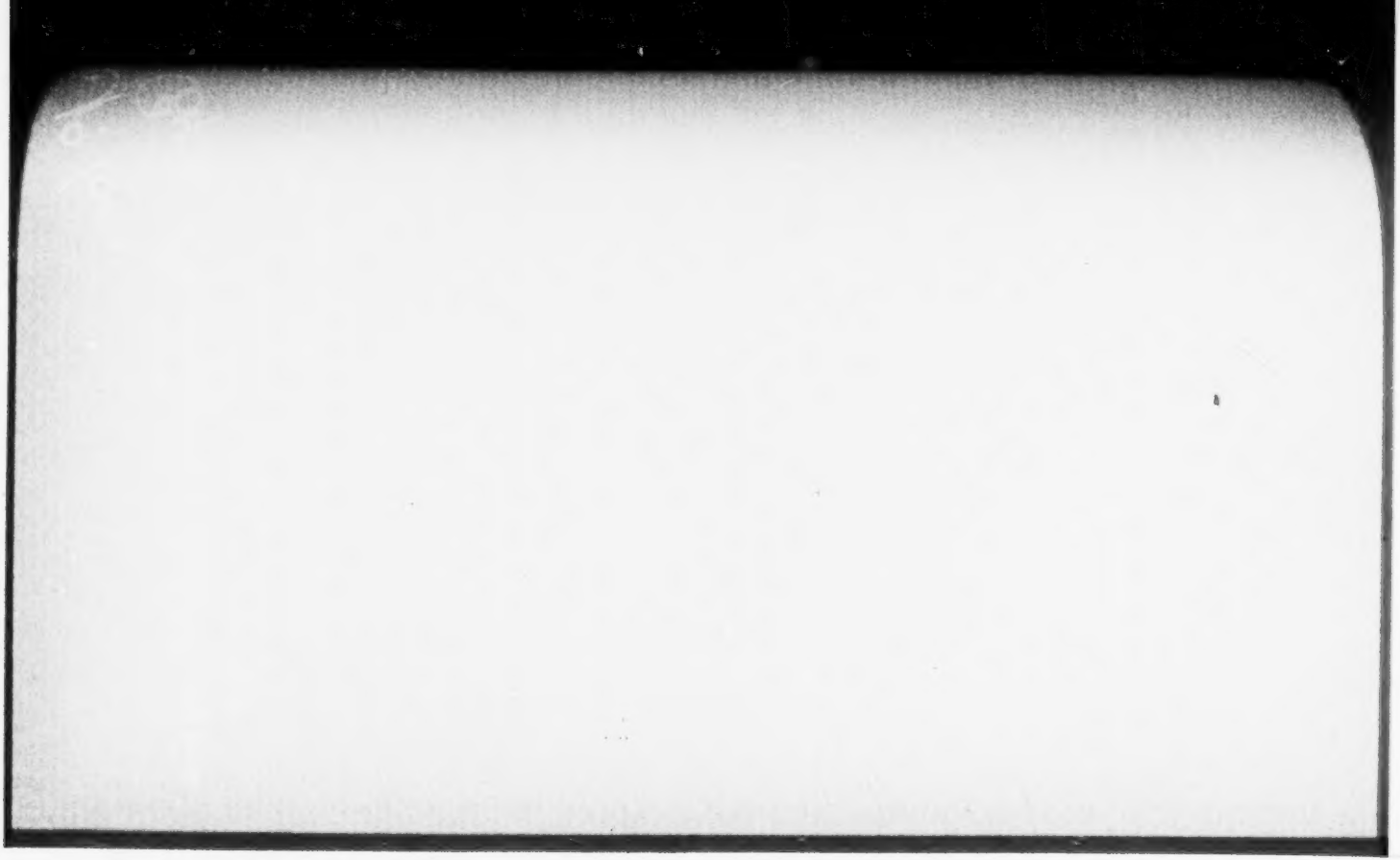
Secs. 477 to 479, Rev. St. D. C., taken from the original act of 1809, show that this was not a lawful subdivision, and therefore not admissible in evidence.

It was an attempt on the part of some of the owners in the square to obtain title by changing the numbers of the lots, for the only difference between the original plat of the square and this is, that in the subdivision Lot 1 begins at the southeast corner.

It will be noted that on its face it shows that original Lots 1 to 20 were differently located.

It is respectfully submitted that so radical a change in the law and practice relative to actions of ejectment in this District, as the affirmation of the judgment of the court below would effect, would be productive of litigation, upset titles and destroy what has hitherto been regarded as a settled and beneficial rule of property.

WM. F. MATTINGLY,
WM. JNO. MILLER,
JOHN RIDOUT,
Attorneys for Plaintiff in Error.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 60.

AARON BRADSHAW, PLAINTIFF IN ERROR

vs.

MARY M. ASHLEY, EMMA B. JENKINS, HAYDEN H. ASHLEY, AND RALPH B. ASHLEY, DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

This was an action of ejectment brought by Nehemiah B. Ashley against the plaintiff in error to recover an undivided interest in four lots of ground in square 939, in the city of Washington. After the case was brought to this court the defendant in error died intestate as to real estate in the District of Columbia, and the present defendants in error are the heirs-at-law of said Nehemiah B. Ashley.

The trial of the case lasted several weeks, and was taken up mainly with matters which became unimportant in consequence of the conclusions reached by the court after all the evidence had been introduced.

The controversy originated in an attempt on the part of the plaintiff in error and his associate, Walter, to take advantage of an ambiguity in the description of the lots in question growing out of the following facts:

The city of Washington comprises about 1,274 squares, all of which, except eight of irregular shape, are divided into lots and numbered according to a uniform system, beginning for lot one at the southeast corner of each square, and proceeding thence, and in consecutive and numerical order, first west, thence north, thence east, and thence south, to the place of beginning. This division into lots and squares was made by the Commissioners, representing the United States Government, and the original proprietors, and is evidenced by separate sheets of paper, one for each square, signed by the parties named, known as certificates of division, which certificates are also copied into certain bound volumes, designated in the certificates as "square records," the fact and place of record in these volumes of each certificate being indorsed upon the certificate itself.

The original certificate of division of square 939 differed from all other certificates of division in that it contained two sets of numbers—one in ink, beginning at the southwest corner of the square, proceeding thence north, thence east, thence west, and thence south, in departure from the uniform system of numbering all other rectangular squares, and the other series of numbers in pencil, beginning with the southeast corner of the square and proceeding thence west, thence north, thence east, and thence south, in conformity with the uniform system of numbering. Both the register of squares produced from the office of the commissioner of public buildings and grounds and the record of squares produced from the surveyor's office show also this same double numbering, in ink and pencil, of the lots in square 939. (See map opposite page nine of the record.)

At the trial the plaintiff's evidence tended to prove the three following independent grounds of recovery:

(1.) That the pencil numbers were the true numbers, and that, if that were the case, the plaintiff had a good record title to all the lots in controversy.

(2.) That the plaintiff and those through whom his title was derived had been in continuous, exclusive, and hostile possession for over twenty years, so as to give him a good title by adverse possession.

(3.) That, if the plaintiff and those under whom he claimed had had less than the requisite twenty years' possession, still they had been in continuous, peaceable possession for a number of years prior to the defendant's entry, and that the defendant was a mere intruder, against whom the plaintiff need show no higher title than that presumed from prior possession.

The learned justice presiding at the trial admitted testimony under each of these three several grounds of recovery asserted by the plaintiff, under objection, subject to the defendant's right to move to strike out at the close of the trial, and subject to the court's rulings upon the admissibility and sufficiency of the testimony at that time. At the conclusion, the defendant having offered no testimony tending to show title in himself, the plaintiff rested his case wholly upon the last of the three above enumerated grounds.

As to the general nature of the questions relating to the controversy about the ink and pencil numbers, we refer to the opinion of the Court of Appeals in this case (Rec., pp. 162, 163). The testimony relied upon by the plaintiff to show twenty years' adverse possession will be found on pages 33 to 79.

The fact that so much space in the bill of exceptions was taken up with matters which became wholly immaterial arose in the following manner: The defendant Bradshaw and John H. Walter, under whom he claimed, had had

placed upon the land records of the District a large number of deeds which purported to transfer title to these lots and to a great many other lots on Capitol Hill, in Washington, from persons who in the deeds assumed to be the heirs of George Walker, who was the owner of the land embraced in the suit when the city of Washington was laid out. It was assumed by the plaintiff's counsel that at least some pretense of an effort would be made by the defendant at the trial to show that he had in fact a title derived from some of the heirs of said Walker; and during the trial Bradshaw's counsel prevailed upon the court to allow some of these deeds to go in evidence upon the assurance made by counsel to the court that evidence of this kind would be offered at a later stage of the trial. We quote from the bill of exceptions (Rec., p. 123) what occurred in this connection:

"Counsel for defendant further stated that the defendant would show what investigations had been made in England and what birth and marriage certificates had been found—everything the defendant has in that direction to show that this is a genuine contention of genuine heirship—and its sole purpose is, aside now from the question of the actual possession, to meet the assertion of counsel for plaintiff that defendant is a trespasser and intruder.

"The court thereupon admitted the proof to go in, with leave to plaintiff's counsel subsequently to make a motion to strike out if they see proper" (123).

After the deeds had all been put in evidence, however, Bradshaw and Walter, who had theretofore attended the trial, left the court-room and neither of them was examined, nor was any evidence offered tending to show that any of the grantors in the deed in question were or claimed to be the heirs of George Walker, or that either Bradshaw or Walter had any reason to believe they were such heirs. Thereupon the plaintiff's counsel asked and the court gave to the jury the instruction, found on page 140 of the record, by which in substance the jury were told that it was imma-

terial whether the plaintiff had made out his paper title or not, or whether he had made out a title by twenty years adverse possession; that if the plaintiff and those under whom he claimed had been in actual possession of the property under a claim of title before the defendant entered and the plaintiff had never abandoned his claim of ownership, he was entitled to a verdict in his favor. This instruction was based upon the fact, undisputed when the evidence was closed, that the defendant was a mere intruder, without any honest claim of title whatever.

The plaintiff having obtained a verdict, the case was taken by the defendant to the Court of Appeals on bill of exceptions, and that court having affirmed the judgment, the case was brought here by writ of error. The only question raised by the bill of exceptions and the only one considered by the Court of Appeals was whether the instruction just referred to was correct, and it is therefore the only question which we shall discuss here.

On page 21 of the brief filed herein on behalf of the plaintiff in error are seven so-called assignments of error. Those numbered one, two, and three relate to the controversy about the ink and pencil numbers of the lots. Those numbered four, five, six, and seven refer to instructions given by the court to the jury. No one of these assignments of error complies with the rule of this court, which expressly provides that when the error alleged is as to the charge of the court "the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused" (rule 21).

These assignments of error do not even refer to the page of the record where the instructions to which they refer are to be found. We call the attention of the court to this plain violation of the rule and submit the matter to it for such action as to it may seem proper.

ARGUMENT.

In an action of ejectment, where the defendant shows no title in himself, but stands in the position of a mere intruder, the plaintiff is entitled to recover upon showing that before the defendant's entry he had been in possession claiming title, and that that claim of title had not been abandoned.

That this is the law has been settled by a long line of decisions in this court.

In Ricard *vs.* Williams, 7 Wheaton, 105, Mr Justice Story, in delivering the opinion of the court, said: "Undoubtedly if a person be found in possession of land, claiming it as his own in fee, it is *prima facie* proof of his ownership and seisin of the inheritance."

In Hickey's Lessee *vs.* Stewart, 3 How., 759, which was an action of ejectment, this court said:

"To enable the defendants in this case to defend their possession successfully, upon their own title, that title must be shown to be a good and subsisting legal title, and superior in law to that set up by the plaintiffs; otherwise it opposes no legal bar to the recovery in the action of ejectment. * * *

"The defendant in ejectment can never defend his possession against the plaintiff upon a title in himself by which he could not recover the possession if he were out and the plaintiff in possession."

Christy *vs.* Scott, 14 How., 282, was an action which originated in the State of Texas, which action this court expressly held was governed by the principles of the common law regulating the merits of a case in a trial of ejectment. That case came up upon a writ of error to the district court to review a judgment of that court on questions of law raised by the plaintiff's demurrer to certain pleas of the defendant. These pleas did not aver that the defendant had any title,

but set up certain supposed defects in the plaintiff's title. After quoting one of these pleas, Mr. Justice Curtis, in delivering the opinion of the court, said:

"According to the settled principles of the common law, this is not a defense to the action. The plaintiff says he was seized in fee, and the defendant ejected him from the possession. The defendant, not denying this, answers that if the plaintiff had any paper title it was under a certain grant which was not valid. He shows no title whatever in himself. But a mere intruder cannot enter on a person actually seized and eject him and then question his title, or set up an outstanding title in another. The maxim that the plaintiff must recover on the strength of his own title, and not on the weakness of the defendant's, is applicable to all actions for the recovery of property. But if the plaintiff had actual prior possession of the land, this is strong enough to enable him to recover it from a mere trespasser, who entered without any title. He may do so by a writ of entry, where that remedy is still practiced (Jackson *vs.* Boston and Worcester Railroad, 1 Cush., 575), or by an ejectment (Allen *vs.* Rivington, 2 Saund. R., 111; Doe *vs.* Read, 8 East., 356; Doe *vs.* Dyeball, 1 Moody & M., 346; Jackson *vs.* Hazen, 2 Johns., 438; Whitney *vs.* Wright, 15 Wend., 171), or he may maintain trespass (Catteris *vs.* Cowper, 4 Taunt., 548; Graham *vs.* Peat, 1 East., 246)."

In Gaines *vs.* New Orleans (6 Wall., 642, 715), Mr. Justice Davis, in delivering the opinion of the court, said:

"The defendants, equally with the complainant, claim title from the same common source. This is clear from the pleadings and proof. If, therefore, both parties claim title from the same person, neither is at liberty to deny that such person had title. On this point the Louisiana authorities are uniform. The rule is the same in equity as at law, and is well stated in Garrett *vs.* Lyle, 27 Ala., 589. The court in that case say: 'We do not deny in equity as well as at law the plaintiff must recover upon the strength of his own title; but because this is the rule it does not follow he must show a good title against all the world; it is enough that he shows a right to recover against the defendants. And there are

many cases in which he has this right, although another person must recover it from him.'"

Burt *vs.* Panjaud, 99 U. S., 180, was an action of ejectment which came up from the circuit court for the northern district of Florida. In that case the plaintiff made no proof of title except certain deeds to her and possession thereunder, no attempt being made to show that the grantors in the deeds had either title or possession. The defendant set up no title in himself. Mr. Justice Miller, in delivering the opinion of the court, said:

"We think there was sufficient evidence as to both lots of plaintiff's possession under claim of ownership. The deed from Mordecai and Kerr, with her actual residence on lot 4, and payment of taxes, was clearly sufficient to establish such possession. So, also, as regards the other lots, the witness who paid the rent was her tenant. The payment of the rent to a man who professed to act as her agent bound the tenant to her as such, and he could not have disputed her title. It was her possession. This was corroborated by the payment of taxes and the absence of any proof of abandonment or loss of possession prior to defendant's tortious entry. It was sufficient for the jury, in the absence of any pretense of right by defendant.

"This principle is so well settled in the law of ejectment and trespass *quare clausum fregit* as to need no citation of authority. It will be found laid down by Mr. Greenleaf in 2 Greenl. Ev d., sect. 311, that either actual possession of the premises or receipt of rent is *prima facie* evidence of title in fee; also sects. 618, 618*a*. (See also Hutchison *vs.* Perley, 4 Cal., 33; Nagle *vs.* Massey, 9 *id.*, 426)."

In referring to the foregoing case in their brief, counsel for the plaintiff in error seem to attach much importance to the fact that at the trial the jury were instructed that if they found that the possession of the plaintiff in that case had continued for *seven years* it was sufficient to entitle her to recover against a trespasser. There is nothing in the report of the case indicating that the period of seven years had any

particular potency. It was mentioned simply because that was the length of time that the plaintiff in that particular case had had possession. Certainly, unless such possession has continued long enough to create a bar against an action by the real owner, possession for seven years is of no more effect than possession for seven days; and it is obvious, from the opinion of this Court in that case, that it laid no stress whatever on the fact that the possession had continued for seven years. No such distinction as is indicated here by our learned opponents is to be found or even suggested in any decided case.

Finally, this whole matter was again gone over most thoroughly by this court in the case of Sabariego *vs.* Maverick, 124 U. S., 296, and the court again held that, by the common law, prior possession of the plaintiff is sufficient to entitle the plaintiff to recover in an action of ejectment where the defendant is a mere intruder. The opinion of this court in that case is quoted at length by the Court of Appeals in its opinion, and will be found on pages 171 to 174 of the record. It will be seen that a leading case in favor of the doctrine laid down by this court is Smith *vs.* Lorillard, 10 Johns., 338.

It is claimed, however, in the brief of our opponents, upon the authority of De Vaughn *vs.* Hutchinson, 165 U. S., 566, and other cases in this court to the same effect, that, in cases involving title to real estate, the law of the State where the land lies, as *evidenced by the decisions of its judicial tribunals*, is a rule of property and binding on this court; that in Maryland it has been uniformly held that in an action of ejectment the plaintiff must establish a flawless title whether the defendant be an intruder or not; that this supposed principle of law was the law of the District when it was ceded by Maryland, and that that has continued to be the law of the District until the decision of the Court of Appeals in this case, and that, in delivering the opinion of that court in this case, Mr. Justice Morris said (Rec., p. 174):

"It is very true that in the State of Maryland a very different doctrine has been adopted, and consistently adhered to, and the rule of the case of Smith *vs.* Lorillard has been repudiated (Mitchell *vs.* Mitchell, 1 Maryland, 44). And it is likewise true that the doctrine of the courts of Maryland, as expounded in the case just cited, has generally been understood to be the law of this District in reference to actions of ejectment."

On this supposed foundation counsel for the plaintiff in error contend that the Court of Appeals erred in following the decisions of this court, and especially its decision in Sabariego *vs.* Maverick, 124 U. S., 296.

We submit, on the contrary, that the law of the State of Maryland on this subject, on the 27th of February, 1801 (2 Stat., 105), when Congress declared that the laws of that State should continue in force in the District, was in nowise different from that laid down by the decisions of this court above cited; that there is not to be found in the reports of judicial decisions in the District any case which tends to sustain the position of opposing counsel, and that even in the State of Maryland since 1801 it has never been held that in an action of ejectment a mere intruder can put the plaintiff, who has had prior possession, to proof of a good title.

Section 3 of the bill of rights of Maryland, which was affirmed by the first constitution of the State, provided that the people of Maryland should be entitled to the common law of England. (See these documents, prefixed to the first volume of Kilty's Laws of Maryland.)

This court, in the cases which we have cited, and which the Court of Appeals in this case followed, has, as we have seen, repeatedly decided that by the common law prior unabandoned possession is all that a plaintiff need show in an action of ejectment as against a defendant who has entered without an honest claim of title. We might well rest this branch of the argument on these decisions. We

proceed to refer, however, to a series of decisions in England, beginning in 1594 and terminating in 1865, which sustain the conclusions so often reached by this court.

COMMON LAW.

In Read and Morpeth *vs.* Erington, Cro. Eliz., 321, which was decided in 1594, the action was ejectment. The defendant asked that the jury be instructed to render a verdict for him because the land was found in hands of "farmors and lessees" by virtue of leases made before the plaintiffs' lease, and it was not found that their leases were ended.

"But the court conceived this not to be material, it being not found that the defendant claimed under the lessees; and the plaintiff having entered and the defendant entering upon him, this is an ejectment of the plaintiff for which the plaintiff shall punish him."

In the same year was decided the case of Bateman *vs.* Allen, Cro. Eliz., 437. In that case the action was also ejectment. The defendant's counsel argued that the plaintiff's lease was void because in the special verdict which was rendered in the case it was not found that one Rhodes, who was conusee of a fine, had been expelled, and if he was in possession the lessors of the plaintiff could not have been in possession, and so could not have made a valid lease.

"But all the judges held it to be good enough; for it shall not be intended that Rhodes was upon the land, but that they (the lessors of the plaintiff) by their entry gained the possession, and though they be in as disseisors their lease is good to the plaintiff, and the defendant without title is not to eject him. Wherefore, without any regard to the matter in law, the plaintiff had judgment to recover."

In Allen *vs.* Rivington, 2 Saund., 111, which was decided in 1678, the action being ejectment, the defendant sought to raise certain questions which involved the construction of a

will under which the plaintiff derived title; but the court held that it was unnecessary to decide such questions, "Because it appeared upon the record that the lessor of the plaintiff had a priority of possession and there was not any title found for the defendant * * * And then the priority of possession alone gives a good title to the lessor of the plaintiff against the defendant, and all the world, excepting against the heir of the devisor."

In Doe *vs.* Anderson, 1 Stark, 262, which was an ejectment case brought before Lord Ellenborough in 1816, it appeared that the defendant had been in possession during the year 1814. The plaintiff showed only that one Strube had been in possession from 1809 to 1814, and that in 1815 the plaintiff's lessor purchased Strube's title at an execution sale. Strube's interest was derived under a lease from one Rogers, which lease was made in 1809. There was no evidence as to Rogers' title. At the close of the plaintiff's evidence the defendant made a motion that the plaintiff be nonsuited. The only reply made on behalf of the plaintiff to this motion was that the defendant's *prima facie* title inferred from his possession had been rebutted by showing the antecedent possession of Strube, under whom the plaintiff's lessor claimed. The motion for a nonsuit was overruled.

In Doe *vs.* Dyball, 3 C. & P., 610, which was an action of ejectment tried before Lord Tenterden, Chief Justice, in 1829, the defendant's counsel assailed a deed under which the plaintiff got his title. To this objection Lord Tenterden said:

"Suppose there had been no deed at all put in. We find that in 1826 a tenant of the lessor of the plaintiff had the key delivered to him when he went in and that he had peaceable possession of this room until the defendant came in November, 1827. That is sufficient proof of title as against a man who comes and takes forcible possession at three o'clock in the morning. The plaintiff is entitled to a verdict."

In Doe *vs.* Webber, 1 Ad. & El., 119, which was an action of ejectment heard before Lord Denman, Chief Justice, and Littledale and Parks, judges, in 1834, all that appeared was that the defendant's possession had been preceded by the plaintiff's possession, and that the possession of neither had lasted twenty years. The only evidence in the case as to title was offered by the defendant and ruled out. Thereupon the plaintiff had a verdict. The law seems to have been so well settled on the subject at this time that the point is not discussed. It appears to have been taken for granted that when the defendant's evidence as to his title was ruled out, the plaintiff was entitled to a verdict as a matter of course, by virtue of his prior possession.

In Davison *vs.* Gent, 38 E. L. & Eq., 469, which was an action of ejectment brought in the court of exchequer before Pollock, Ch. B., Bramwell, B., and Watson, B., the defendant undertook to take advantage of a defect in the plaintiff's title, and all three of the judges, in separate opinions, held that the plaintiff's prior possession was sufficient against the defendant, because the latter was a mere intruder. Pollock, Ch. B., said:

"I cannot assent to the notion that where a party has a right to maintain an action of ejectment by reason of his possession, if he attempts also to show title and discloses a flaw in his title, he cannot recover by reason of his possession. He may say, 'I claim to recover both by reason of my title and my possession; and failing in one, I will rely upon the other.'"

In Asher *vs.* Whitlock, L. R., 1 Q. B., 1, which was an action of ejectment, determined in 1865, the same doctrine was laid down by Cockburn, Ch. J., and Mellor and Lush, JJ. In that case Chief Justice Cockburn said:

"I take it as clearly established that possession is good against all the world, except the person who can show a good title, and it would be mischievous to change this established doctrine. In Doe *vs.* Dyball (E. C. L. R., vol. 22) one

year's possession by the plaintiff was held good against a person who came and turned him out, and there are other authorities to the same effect. * * * All the old law on the doctrine of disseisin was founded on the principle that the disseisor's title was good against all but the disseisee. * * * We know to what extent encroachments on waste lands have taken place, and if the lord has acquiesced and does not interfere, can it be at the mere will of any stranger to disturb the person in possession?"

The next question is whether the common law on this subject had been changed or modified by the Maryland courts prior to February 27, 1801.

The first reports of decisions of the Maryland courts are the four volumes of Harris and McHenry, which were not published until 1809. The title page states that they contain all decisions of the provincial courts from 1700 to the time of the American Revolution. In fact, the earliest case reported was decided in 1658. In very few of the cases is the opinion of the court given, the result merely being stated. The preface shows the difficulties which the reporters encountered in searching through musty records for decisions made from thirty-five to one hundred and fifty years before. The next Maryland reports are the four volumes of Harris and Johnson (Reverdy). The first of these volumes was published in 1821. They purport to contain decisions of the court of appeals and general court from 1800 to 1826. From 1826 to the present time the Maryland decisions have been fully and promptly reported. There are no reports whatever of the cases decided between 1776 and 1800.

It is obvious that very little reliance is to be placed upon any supposed changes in the common law made in Maryland prior to 1801; and when we come to examine the cases in the four volumes of Harris and McHenry, which is our main source of information on this subject, we find that the

only cases which in any way touch the question which is involved here are authorities in our favor.

Thus in Hutchins' Lessee *vs.* Erickson, 1 H. & McH., 339, which was an action of ejectment, decided in 1769, in the provincial court of Maryland, the plaintiff's counsel, as will appear from his brief, relied upon the proposition thus stated by him: "Prior possession is a sufficient title in ejectment, unless a better title can be shown." In support of this proposition they referred to several of the English decisions hereinabove cited. The report states that the defendant's counsel, on the other hand, claimed "priority of possession is not a good title in ejectment." The plaintiff had judgment in his favor, which was affirmed by default in the court of appeals. This case, if these reports can be relied upon at all, is an express decision of the very point in issue in our favor. The only other point made by the plaintiff's counsel was to show that the defendant's title was not good, he claiming under an escheat patent, without having shown that the tenant, upon whose supposed death the land reverted to the proprietary, was dead. The plaintiff could not have succeeded unless the court had decided both the questions involved in his favor.

These reports as originally published contain no syllabi, but as republished by William T. Brantly in 1883, the syllabus of this case is as follows:

"Possession is a good title in ejectment against a defendant claiming under an escheat grant, there being no proof of the death of the prior grantee without heirs and the defendant having forcibly dispossessed the plaintiff.

"No presumption will be made that the original grantee of land died without heirs in order to support an escheat grant."

In House's Lessee *vs.* Beatty, 3 H. & McH., 182, which was an action of ejectment, decided in 1794, it appeared that by an act of assembly the commissioners had been authorized to sell certain lots in Georgetown, then a part of Maryland,

upon the condition that the purchaser of any lot should build a house upon it within two years from the date of the purchase. A lot had been sold to one Beatty. Afterwards John House applied to the commissioners to purchase the same lot, on the ground that it had become forfeited by Beatty's failure to build within two years. The result of the proceedings was that House became the owner of the lot, out Beatty remained in possession and erected a building upon it. Thereupon the action was brought by House's lessee against Beatty to recover possession. It was held that House was entitled to the lot because Beatty was in as a wrong-doer, and that as he had kept House, the real owner, out of possession, the building which he had erected was to be taken as erected by House, who was entitled to judgment. This judgment was affirmed by the court of appeals in 1796.

Next, as to "judicial decisions" in the courts of the District of Columbia.

In no reported case in the District from 1801 down to the present time has it been held that when the defendant in an action of ejectment appears to be a mere intruder he can put the plaintiff, who has been in possession or who claims under those who have been in possession, to prove his title. All the decisions, so far as they relate to this point at all, are to the contrary.

In Edmonston *vs.* Lovell, 1 Cr. C. Ct., 103, which was an action of trespass *quare clausam fregit*, decided in 1802, the court decided that the execution of a deed of bargain and sale of land need not be proved by subscribing witnesses if the deed has been duly acknowledged and recorded, "*and that possession alone was sufficient to maintain an action against one who has no title.*"

In Worthington's Lessee *vs.* Etcheson, 5 Cr. C. Ct., 302,

which was an action of ejectment, determined in 1837, the report states the case as follows:

"The defendants contended that the plaintiff could not recover without showing notice to the defendants to quit, but the court decided that the defendants were to be considered as intruders, and therefore not entitled to such notice."

In Anderson *vs.* Smith, 2 Mackey, 279, which was an action of ejectment, Mr. Justice Cox, in delivering the opinion of the supreme court of the District of Columbia in general term, laid down apparently as a proposition which was so plain that it could be taken for granted, that it is only where there is no proof of possession that the plaintiff must trace back his paper title to the State or the United States.

Finally, the Court of Appeals itself, in a case decided as late as February, 1897, laid down precisely the doctrine for which we are contending, in direct opposition to what in the present case it says was "understood" to have been the law in the District of Columbia. It is due to that court to state that in the argument of the present case the previous case to which we now refer was overlooked by counsel and was not brought to the notice of the court. The case in question is Staffen *vs.* Zeust, 10 Appeals D. C., 260. On page 269 Chief Justice Alvey, in delivering the opinion of the court in that case, said:

"The action of ejectment is, strictly speaking, a possessory action, the plaintiff being required to show a present legal right to the possession of the premises as against the defendant. This may be done by evidence to establish the fact of prior possession by the plaintiff, even though that possession be for a time less than twenty years; such possession being sufficient to give rise to the presumption of title as against a defendant who has subsequently acquired possession by mere entry without any lawful right; provided, however, that such prior possession of the plaintiff was not voluntarily relinquished without the *animus revertendi*. Allen *vs.* Rivington, 2 Saund., 111; Smith *vs.* Lorillard, 10 Johns., 338–356;

Christy *vs.* Scott, 14 How., 282–291; Sabariego *vs.* Maverick, 124 U. S., 296–300."

It will be seen that this opinion is based upon the leading English case of Allen *vs.* Rivington, in 2 Saund., and the leading American case of Smith *vs.* Lorillard, 10 Johns., as well as upon two of the decisions of this court, and that the opinion was delivered by a very able jurist, who had been a member of the court of appeals of Maryland for many years before he became chief justice of the Court of Appeals of this District. It is manifest that in February, 1897, the Court of Appeals did not consider itself obliged to decide this question in the way it did merely because of the decisions of this the superior court, but that it understood that it was laying down a doctrine that was a part of the law of the District of Columbia before those authoritative decisions were rendered.

In view of all the foregoing, it seems to us to be immaterial what the court of appeals of Maryland may have held to be the law on this subject after 1801. The decisions of that court after that date are entitled to great respect, but are not binding in this District. (See Van Ness *vs.* Hyatt, 13 Pet., 299; Thaw *vs.* Ritchie, 5 Mackey, 200.)

The court of appeals of Maryland has itself held that the decisions of the courts of England as to the common law rendered after the Revolution are not binding on it. Thus in Greenwood *vs.* Greenwood, 28 Md., 369–381, that court said:

"Our ancestors unquestionably brought with them to this country that common law as their birthright, and all our constitutions have sacredly guarded it as one of the *rights* of the people, but the courts which the same people have established to administer that law are made the sole authoritative expositors of it for *them*. Decisions in England made since the American Revolution while entitled to the greatest

respect are not *binding* authorities upon this court; on the contrary, the practice of this, as of other courts, is to receive their own decisions only as of binding force."

Nevertheless, we have examined the Maryland cases relied upon in the brief on behalf of the plaintiff in error in this case, and we find that they all simply lay down the general rule that in an action of ejectment the plaintiff must succeed upon the strength of his own title and not upon the weakness of the defendant's, and that he must trace his title back to the original proprietary or to the State. This is simply reaffirming the doctrine which this court has recognized in all the cases upon which we rely and which it has expressly laid down in many other cases, some of which are cited on that point on page 29 of the brief for the plaintiff in error.

The question here is whether, when the defendant is a wrong-doer, a trespasser, an intruder, there is an exception to the general rule. None of the cases in Maryland cited in the opposing brief discuss this question at all. In none of them, so far as we can see, did the facts of the case give opportunity for such a question to be raised. In all of them the defendant made at least a plausibly honest claim of title. And among the Maryland reported cases since 1801 there are several which indicate that if this precise question should be presented to the court, it would recognize the exception to the general rule which is involved in the case at bar.

Thus, in Norwood *vs.* Shipley, 1 H. & J., 295, decided in 1802, it was held that in an action of trespass *q. c. f.*, the plaintiff must show title or he must show "that he was in the actual possession of the place where the trespass was committed and at the time when it was committed."

In Cockey *vs.* Smith, 3 H. & J., 20, decided in 1810, the main question in the case was as to the validity of the defendant's title. She claimed under a grant without producing it or showing that it was lost, and without showing any

rightful possession under it. She started her title with a deed from one Clark. The court said:

"It is not stated that Clark was ever in possession of the land; and if he was, he was an intruder and his deed could not operate to transfer any right to the land, for he had no right or interest to transmit; and the entry and possession of Franklin under Clark's deed was an intrusion, the land being vacant land."

In Hoye *vs.* Swan's lessee, 5 Maryland, 237, decided in 1853, the principal question was whether, under the circumstances of that case, the defendant's adverse possession of a part of the disputed tract was to be held constructively co-extensive with the tract, or to be confined to that part which he had actually enclosed. It was held that the defendant's grantor was a mere intruder and could take nothing except what he actually got within his grasp, and the court says that it adopts the "obvious and important distinction which the reported cases and elementary writers recognize between a possession taken by a wrong-doer and one taken by a person under title."

In Tyson *vs.* Shuecy, 5 Maryland, 540–550, decided in 1854, the case being an action of trespass *q. c. f.*, the court held that in an action of that character "possession under a parole lease or bare possession alone as against a wrong-doer, without any title whatever, is sufficient to sustain the suit."

In Sanders *vs.* McDonald, 63 Maryland, 503, decided in 1875, which was an action of ejectment, Chief Justice Alvey, in delivering the opinion of the Court of Appeals, said:

"And as a general principle, with some few well-defined exceptions, to enable the defendant in ejectment to defend his possession successfully, either upon his own title or the title of a third party, that title must as a general rule be shown to be a good and subsisting legal title and superior in law to that set up by the plaintiff; for otherwise it opposes no legal bar to the right of the plaintiff to recover (Hickey's Lessee *vs.* Stewart, 3 How., 750)."

In the case in this court thus cited and approved it was held, as we have seen, that a defendant in ejectment must show a title upon which he could succeed if he were the plaintiff.

As to the case of Mitchell *vs.* Mitchell, 1 Maryland, 44, decided in 1851, which seems to be principally relied upon here as indicating what was the law in Maryland on the point now in controversy, and which is referred to by the Court of Appeals in its opinion in this case (p. 174), the plaintiff produced no patent from the original proprietors or from the State, but relied upon possession. Elizabeth Mitchell and those under whom she derived title were in adverse possession from 1817 until her death, in 1841. She was a life tenant under the will of her husband, James Mitchell, who died in possession. The question was, where did the title go on Elizabeth's death? The plaintiff's lessor was James' sole sister. The defendant was a half-brother of James Mitchell. He took possession on Elizabeth's death and claimed that James left no brother or sister, and that the title descended to his, defendant's, son. It will be seen that the plaintiff in the case had never been in possession after the death of James Mitchell, and that both parties claimed under him. It was therefore one of those cases where both parties claimed under the same person, and the only question was which had the better title? The defendant was not a mere intruder. He entered under a claim, perfectly honest so far as the record discloses, that James had died leaving no heirs of the whole blood, and that the title had descended to the heir of the half blood, for whom he took possession. Nowhere in the opinion of the court did it directly or indirectly pass on the question as to the extent to which the plaintiff must go in an action of ejectment where the defendant had taken possession without any claim or title whatever.

Counsel for the plaintiff in error, throughout that part of their brief which deals with the question we are discussing, assume that the rule against intruders upon which we rely is

"exceptional;" that it is "the New York rule;" that it is contrary to the general doctrine upon the subject in this country. We have taken the trouble of looking at the cases on this subject in the different States of the Union, and so far we have been unable to find a single case in which any court in this country, in an action in which the defendant was merely an intruder, has held that in an action of ejectment he can take advantage of defects in the title of the person whom he has ousted. On the contrary, the universal doctrine in the United States seems to be that which has been so often promulgated by this court. Of the numerous cases in the State courts on this subject we refer to the following:

Plummer *vs.* Buckman, 55 Me., 103 (1866).
Austin *vs.* Bailey, 37 Vt., 219–225 (1864).
Breck *vs.* Young, 11 N. H., 485.
Slater *vs.* Rawson, 6 Metc. (Mass.), 439.
Hubbard *vs.* Little, Jr., 9 Cush., 475 (1852).
Smith vs. Lorillard, 10 Johns., 338.
Jackson *vs.* Denn, 5 Cowan, 200.
Whitney *vs.* Wright, 15 Wend., 172 (1836).
Thompson *vs.* Burhans, 79 N. Y., 97.
Hunter *vs.* Starin, 26 Hun., 529 (1882).
Mayor, etc., *vs.* Carleton, 113 N. Y., 284 (1889).
Den vs. Morris, 7 N. J. L., 7 (1824).
Mobley *vs.* Brunner, 59 Pa. St., 483.
Turner *vs.* Reynolds, 23 Pa. St., 199–205.
Hull *vs.* Campbell, 56 Pa. St., 154.
Lessee of Holt's Heirs *vs.* Hemphill's Heirs, 3 Ohio, 237.
Doe vs. West, 1 Blackf., 133.
Davis *vs.* Easley, 13 Ill., 192 (1851).
Mason *vs.* Park, 3 Scammon, 532 (1842).
Barger *vs.* Hobbs, 67 Ill., 597.
Benefield *vs.* Albert, 132 Ill., 665.
Harrell *vs.* Enterprise Bank, 183 Ill., 541.
Shaw *vs.* Hill, 79 Mich., 86 (1889).

Van Auken *vs.* Monroe, 38 Mich., 725.
Bates vs. Campbell, 25 Wis., 613.
Rau *vs.* Minnesota Valley R. Co., 13 Minn., 442.
Sherin *vs.* Bracket, 36 Minn., 153 (1886).
Simpson *vs.* Boring, 16 Kan., 251 (1876).
Douglass *vs.* Ruffin, 38 Kan., 530 (1888).
Duffey *vs.* Rafferty, 15 Kan., 17.
Hestres *vs.* Brannan, 21 Cal., 423.
Donahue *vs.* Gallavan, 43 Cal., 573.
Baum *vs.* Reay, 96 Cal., 465.
Toppscott vs. Cobbs, 11 Gratt., 172 (1854).
Sowder vs. McMillin's Heirs, 4 Dana, 456 (1836).
Seymour vs. Creswell, 18 Fla., 29.
Simmons *vs.* Spratt, 20 Fla., 495.
Goodwin *vs.* Markwell, 37 Fla., 466.
Jackson *vs.* Haisley, 35 Fla., 587–606, etc.
Hartley *vs.* Ferrell, 9 Fla., 374.
Bagley *vs.* Kennedy, 85 Ga., 706 (1890).
Boynton *vs.* Brown, 67 Ga., 396.
Thape *vs.* Atwood, 100 Ga., 599 (1897).
Badger *vs.* Lyon, 7 Ala., 564 (1845).
Dingey *vs.* Paxton, 60 Miss., 1048 (1883).
Trager *vs.* Shepherd, 18 So. R., 122, Sup. Ct. Miss., (1895).
Wilson *vs.* Palmer, 18 Tex., 595 (1857).
White *vs.* Keller, 114 Mo., 483 (1892).
Bains *vs.* Bullock, 129 Mo., 121 (1895).
Weaver *vs.* Rush, 62 Ark., 51.
Carnall *vs.* Wilson, 21 Ark., 67 (1860).

Those of the above cases which are italicized will be found especially instructive.

Counsel for the plaintiff in error make the sweeping assertion that "the exceptional cases in those jurisdictions which justify a recovery on proof of prior possession are all cases of actual, visible possession, and not where the entry of the defendant was upon vacant and unoccupied land." This exceedingly comprehensive statement is not supported by reference to any authority whatever. Even if we should agree with counsel that it is the law, it would not help their case, because here there was both a forcible entry and a forcible detainer. The plaintiff's brother, James A. Ashley, testified that the fence which Bradshaw after his original entry put around the property in question was demolished by the witness, and that three or four days afterwards he found that somebody had erected a brick structure on the land (61). Another witness testified that Bradshaw superintended the erection of this building; that he, with a gang of men who had some kind of weapons in their hands, was there; that these men were inside and said it was a fort, and said they were going to hold the fort, the street in the meantime being crowded with people watching the performance (63).

Counsel for the plaintiff in error follow the observation which is quoted above by the statement that there is no evidence tending to show that the Ashleys had ever been in possession of three of the four lots in controversy, and that the evidence showed the other to be "vacant and unoccupied for seven years prior to the defendant's entry." But by reference to the instruction which the court gave to the jury, at the request of plaintiff's counsel (140), it will be seen that before the jury could find a verdict for the plaintiff they were required to find that the plaintiff and those under whom he claimed had been in actual possession and had continued to exercise acts of exclusive ownership, such as paying the taxes on the property, renting the same or parts thereof to tenants from time to time, selling sods therefrom, and giving permission to pasture cows thereon, and generally

that the plaintiff never abandoned his possession. The evidence showing these acts of possession and ownership will be found on pages 42–53, 54, 60–63, 67–78 of the record.

Of the numerous cases which we have cited in support of our contention as to the rule against intruders, there are but few in which there have been a forcible ejection of one in actual possession. No such distinction as that which counsel suggest is made, so far as we can recall, in any of the cases. If the plaintiff, either in person or by those under whom he claims, has had possession, either actual or constructive, and he has not abandoned his claim to the property, he has a right to turn out an intruder by an action of ejectment. This is the principle running through all of the cases.

In the leading case of Smith *vs.* Lorillard, 19 Johnson, 338, the plaintiff had been out of possession for several years before the defendant took possession. In many of the cases which we have cited it is expressly stated by the court that for the purpose of maintaining an action of ejectment against an intruder it is not necessary that the plaintiff should have such possession as would have amounted to a disseisin of the real owner. On this point see, for instance, Slater *vs.* Rawson, 6 Metcalfe, 439; Hubbard *vs.* Little, Jr., 9 Cush., 475.

And in a greater number of the cases the lands in controversy were those upon which there were no buildings and around which there were no inclosures, the only possession had by the plaintiff being that constructive possession by which ordinarily wild and vacant lands are held by the owners. (See Christy *vs.* Scott, 14 How., 282; Asher *vs.* Whitlock, L. R. 1 Q. B., 1; Hunter *vs.* Starin, 26 Hun., 529; Mayor *vs.* Carleton, 113 N. Y., 284; Davis *vs.* Easley, 13 Ill., 192; Van Auken *vs.* Monroe, 38 Mich., 725.)

In the brief on behalf of the plaintiff in error in this case no attempt is made to give any reason why a defendant who has wrongfully taken possession of another man's land should be allowed to defeat the action of the person whom he has turned out of possession by requiring the person disseized to prove a perfect title. It is indeed suggested at the present time in this District that there is a statute providing for cases of forcible entry and forcible detainer which gives to the person dispossessed a summary remedy. But this statute was not enacted until 1864, and the question remains whether the common law on this subject was so defective and unreasonable that any person holding real estate was subject to lose it at any time by having another turn him out of possession, and then point to a flaw in his title. The flagrant injustice of such a rule is apparent. That it would tend to produce breaches of the peace is obvious enough. A man turned out of possession in this way by the strong hand and having no way of recovering possession through the law would naturally meet force with force.

Real estate is but one species of property. There is no reason for any distinction in this regard between it and personal property. Yet it seems always to have been a part of the common law, and the rule in England and everywhere in this country, that a defendant who without any claim of title in himself has taken possession of the personal property of another, when called to account, either in action of trover, trespass, or replevin, must answer to the person from whose possession he took the article, without regard to that person's title. He may hold it as owner, as bailee, or, for that matter, he may himself have acquired it by wrong, notwithstanding it is his as against one who has taken it from him without any honest claim of title whatever (Cobbey on Replevin, sec. 60; 2 Greenleaf Ev., sec. 637).

Again, an exception everywhere recognized to the general rule that the plaintiff in ejectment must show a good title in

himself, without reference to the weakness of that which is set up by the defendant, is that when two claim under the same person the plaintiff need not go farther back than to the common source of title. In all such cases the court, or, if there be a question of fact involved, the court and jury, decide merely which has the better title, assuming that the title was perfect in him under whom both the parties claim.

Gaines *vs.* New Orleans, 6 Wall., 715.

Let us suppose now that an action of ejectment is brought by A against B, who knows that he and A both claim under C. A proves his title derived from C and rests his case. B's counsel discover that A's title derived from C is better than B's title, derived from the same source. Thereupon they decline to set up any claim of title in themselves, relying only upon their possession, which must have been obtained by turning A out of possession, or there would have been no ouster. A is thereupon called upon to prove C's title, and it is found to be defective. A verdict for the defendant follows, as a matter of course. The astonishing conclusion is that a man who has entered under an honest claim of title finds that if he makes that defense he will be defeated, but if he refuses to do so and claims that he is a mere intruder he keeps the land.

Absurd as this may seem, it is precisely the conclusion reached by the court of appeals of Maryland in Ahern *vs.* White, 39 Maryland, 409. In that case both parties claimed title from the same third party. The plaintiff's title turned out to be the better one. The defendant's counsel insisted, however, that the plaintiff had not shown a good title by grant from the State and mesne conveyance down to himself, as is required ordinarily in actions of ejectment in Maryland, and they particularly relied upon the case of Mitchell *vs.* Mitchell, 1 Maryland, 44. In its opinion the court said that this difference would have been fatal if the

defendant had rested its case on the plaintiff's proof without introducing his own title; but that as *he* had shown that both claimed from the same party, all that the court had to do was to decide which had the better title. The court gave as a reason for this conclusion that—

"There are many cases in which the well-settled rule of ejectment law, that to enable a plaintiff to recover he must show title regularly deduced from the State or adverse possession, for twenty years or more, is dispensed with."

We have often heard that a party must come into equity with clean hands. We have never heard that in a court of law in any case a party may improve his position by showing that his hands are not clean.

It will be seen that the counsel for the plaintiffs in error in their brief make no claim that Bradshaw was anything but an intruder. In their statement of the case they parade a list of the deeds which they offered in evidence, but they nowhere suggest that these instruments of themselves tended to show that Bradshaw stood in the position of one entering upon land believing, in good faith, that he had a right to do so. Bradshaw's first entry upon the land occurred in March, 1889 (61). The earliest of the deeds which he offered in evidence bears date the 2d day of August, 1889 (124). Bradshaw's real authority for taking possession of this land is the extraordinary contract dated January 21, 1889, between certain persons who describe themselves as the heirs of George Walker, the original proprietor, and J. Augustus Taylor and John H. Walter (127 to 130). By this instrument Taylor and Walter undertook, for the parties with whom they contracted, at their own expense to get and defend possession of a large number of lots in this city, Taylor and Walter being bound to account to the supposed "heirs" if the trans-

action resulted in a profit, but to stand the loss themselves should they fail through force or intimidation to extort anything from the rightful owners of any of the lots. That such a paper as this is not a muniment of title in this District and cannot even be offered in evidence as such, even where it is made with persons who are proved to be in a position to claim title to the land in controversy, was decided in Peck *vs.* Heurick, 6 Ap. Cas. D. C., 273; 167 U. S., 624.

This remarkable document starts out with a recital that the first parties—some seventeen in number—"have by deed of even date herewith conveyed said real estate to the said John H. Walter" (127). Yet no such deed was offered at the trial and there was no evidence that they or any of them ever existed.

Even if the deeds offered in evidence had been deeds from persons claiming to be the heirs of a former owner to Bradshaw or his confederate, Walter, and had been executed prior to March, 1889, the deeds themselves, without any proof that the grantors were in fact such heirs, manifestly would not tend to prove that Bradshaw entered under a claim of title made in good faith. Without such evidence the tendency would have been the other way, because the natural inference would be that the deeds were from fictitious heirs and were obtained for the purpose of giving the appearance of good faith to a transaction known to be wrongful.

These deeds, without proof of heirship, were not properly admissible in evidence at all.

Van Auken *vs.* Monroe, 38 Mich., 725.

It is respectfully submitted that the judgment below is right and that it should be affirmed.

J. J. Darlington,
A. S. Worthington,
Attorneys for ~~Plaintiffs~~ Defendants in Error.

Supreme Court of the United States.

No. 60.—October Term, 1900.

Aaron Bradshaw, Plaintiff in Error, vs. Nehemiah B. Ashley. } In error to the Court of Appeals of the District of Columbia.

[January 14, 1901.]

Mr. Justice Peckham delivered the opinion of the Court.

The defendant in error, the plaintiff below, brought this action of ejectment in the Supreme Court of the District of Columbia to recover from the defendant the possession of one undivided fifth part of certain lots in the city of Washington, in square 939, sometimes described as lots 1, 2 and 3 in that square, and sometimes as lots 4, 5 and 6; and he also sued to recover an undivided fourth part of another lot in the same square, sometimes designated as lot 20 and sometimes as lot 3. Entry and ouster were alleged to have taken place on March 22, 1889, and in another count on November 28, 1890. There were proper counts also for the recovery of mesne profits. The defendant pleaded not guilty. There was a verdict for the plaintiff for the possession of the property and for one cent damages. The defendant appealed to the Court of Appeals of the District, where the judgment was affirmed, and he comes here by writ of error.

On the trial the plaintiff endeavored to prove a record title to the lots, through various mesne conveyances from the original owners, and for that purpose gave evidence, under the objection of defendant, tending to explain the appearance of two sets of numbers on the map of square 939, on file in a public office of the District, one set being in ink and one set in pencil, and he claimed that the pencil were the correct numbers, in which case he contended his record title in fee was perfect. He also gave evidence tending to show a title by adverse possession for twenty years.

The defendant controverted these claims, but at the time he rested his case there was not the slightest evidence which tended to show title in himself or to connect himself in any way with the title. He put in evidence some deeds executed by certain individuals residing in England, which recited that they (the grantors) were some of the heirs at law of George Walker, who was the original owner of the square, but there was no evidence of the truth of those recitals, nor was any attempt made to show that these grantors were heirs of Walker, or that they had any title to the lots which the deeds purported to cover. The deeds seem to have

been offered in evidence upon the theory that the defendant by that means showed that he was not a mere trespasser or intruder, but came in under a claim of title, although it was not shown to have the least validity. Some other deeds of like nature were also put in evidence.

At the close of the case the evidence showed that the defendant was a simple trespasser without the color of title, and the counsel for the plaintiff, not insisting upon the proof regarding his record title or upon an adverse possession for twenty years, thereupon based his case upon the claim that he had proved that at the time when the defendant intruded upon and ousted him he had been, by himself or his grantors, for a number of years in the actual, continuous and undisturbed possession of the lots, claiming to own under deeds purporting to cover them, and that he was therefore entitled to recover as against the defendant, who was a mere intruder, without further proof of title.

The court was therefore requested by the plaintiff to charge the jury that if it found from the evidence that the plaintiff and his grantors had been thus in possession, when he was ousted by the defendant, himself being without title, the plaintiff was entitled to recover. The court charged as requested, the defendant excepted, and the jury found in accordance with the plaintiff's claim. This course eliminated all questions regarding a valid record title or a title by adverse possession for twenty years, and so all questions of admissibility or sufficiency of evidence to prove either of those claims drop out of the case, and we have to deal with the simple proposition of the correctness of the charge.

The defendant urges here that the charge was erroneous because it ignored and ran counter to the rule in ejectment, that the plaintiff must recover upon the strength of his own title and not upon the weakness of that of the defendant; that the mere fact of prior possession of the premises by the plaintiff without evidence of any legal title to them was not sufficient to allow a recovery as against the defendant in possession, even though the defendant had no title himself and did not connect himself with the legal title. He claims that whatever it may be in other jurisdictions, the rule as charged by the court does not obtain in the District of Columbia, and that in this District the plaintiff is always bound to prove a good and valid title as against a defendant in possession, by some other evidence than prior possession. He also contends that if the rule be otherwise, yet in this case there is not sufficient evidence that the plaintiff had such possession of the lots at the time the defendant entered as to enable him to base a claim to the benefit of the rule or to authorize a recovery in this action.

The evidence is that when defendant entered upon them they were unimproved and vacant city lots. It is undisputed that the plaintiff and his grantors claimed title to them by virtue of conveyances, which they contended came from the original owners, and plaintiff and his predecessors,

under such deeds, had exercised usual acts of ownership and possession natural in the case of a city lot which was vacant and unimproved. The lots had not been fenced, but the evidence showed there had been a building on one of them, and after its sale to Ashley, the plaintiff's decedent, the house had been removed by Ashley's permission, and rent had been paid for it to him while it remained on the lot. It also appeared that for quite a long time the plaintiff and his grantors had rented, and collected the rent of the other lots for pasturing cattle thereon; they had authorized others to take sod therefrom, and pursuant to such authority sod had been taken from these lots by other persons, and although this had ceased about 1886, and the defendant did not enter until 1889 or 1890, yet the possession of the plaintiff was not in the meantime in any manner disturbed or interfered with, but continued as it had been, up to defendant's entry; taxes had been paid by him or his predecessors upon the lots, and in brief it appears that all that the nature of the case admitted in order to show actual and continuous possession and claim and acts of ownership had been proved and claimed in regard to the property by the plaintiff. Although the tenancy may have ceased and the sale of the sod concluded some time before defendant entered, yet the plaintiff had remained in the constructive possession, claiming full ownership of the premises, even since the tenancy, and up to the time of defendant's entry. There was an utter absence of any evidence of abandonment.

The contention of the defendant practically is that in ejectment there can be no possession within the rule referred to, of a vacant and unimproved city lot, unless it is at least surrounded by a fence sufficient to warn off trespassers or intruders; that if the lot be vacant, unimproved and unfenced, no matter what acts of ownership have been exercised over the lots for a long time by the person claiming to own it, the trespasser or intruder may nevertheless enter upon the land, and cannot be ousted without strict proof that the plaintiff has a good and valid title to the lot aside from any claim of prior possession. We do not assent to this contention.

We think the plaintiff in this case proved enough to submit to the jury the question of possession, and enough if believed, to entitle him to recover as against the defendant, who gave no evidence of any title in himself nor in any one under whom he claimed, and who was, so far as the evidence disclosed, a mere trespasser upon the lots claimed by the plaintiff.

An examination of the authorities will, as we think, render it clear that the rule in regard to possession and the presumption arising therefrom was correctly stated, and it will appear that it is not inconsistent with the acknowledged rule in ejectment that the plaintiff must recover upon the strength of his own title and not upon the weakness of the title of the defendant. The question is what presumption arises from the fact of possession of real property? Generally speaking, the presumption is that the

person in possession is the owner in fee. If there be no evidence to the contrary, proof of possession, at least under a color of right, is sufficient proof of title. Therefore, when in an action of ejectment the plaintiff proves that on the day named he was in the actual, undisturbed and quiet possession of the premises, and the defendant thereupon entered and ousted him, the plaintiff has proved a *prima facie* case, the presumption of title arises from the possession, and unless the defendant prove a better title, he must himself be ousted. Although he proves that some third person, with whom he in no manner connects himself, has title, this does him no good, because the prior possession of the plaintiff was sufficient to authorize him to maintain it as against a trespasser, and the defendant being himself without title, and not connecting himself with any title cannot justify an ouster of the plaintiff. This is only an explanation of the principle that the plaintiff recovers upon the strength of his own title. His title by possession is sufficient, and it is a title, so far as regards a defendant who only got into possession by a pure tort, a simple act of intrusion or trespass, with no color or pretense of title.

The latest case in this court upon the subject is that of *Sabariego* v. *Maverick*, (124 U. S. 261.) It was there stated that the rule was that a person who was in possession of the premises under color of right, which possession had been continuous and not abandoned, gave thereby sufficient proof of title as against an intruder or wrongdoer who entered without right. Mr. Justice Matthews, in delivering the opinion of the court, said (at page 297):

"This rule is founded upon the presumption that every possession peaceably acquired is lawful, and is sustained by the policy of protecting the public peace against violence and disorder. But, as it is intended to prevent and redress trespasses and wrongs, it is limited to cases where the defendants are trespassers and wrongdoers. It is, therefore, qualified in its application by the circumstances which constitute the origin of the adverse possession, and the character of the claim on which it is defended. It does not extend to cases where the defendant has acquired the possession peaceably and in good faith, under color of title. (*Lessee of Fowler* v. *Whitman*, 2 Ohio St. 270; *Drew* v. *Swift*, 46 N. Y. 204.) And in the language of the Supreme Court of Texas in *Wilson* v. *Palmer*, (18 Texas, 592, 595,) 'The evidence must show a continuous possession, or at least that it was not abandoned, to entitle a plaintiff to recover merely by virtue of such possession.' That is to say, the defendant's possession is in the first instance presumed to be rightful. To overcome that presumption the plaintiff, showing no better right by a title regularly deduced, is bound to prove that, being himself in prior possession, he was deprived of it by a wrongful intrusion by the defendant, whose possession, therefore, originated in a trespass. This implies that the prior possession relied on by the plaintiff must have continued until it was lost through the wrongful act of the defendant in dispossessing him. If the plaintiff cannot show an actual possession, and a wrongful dispossession by the defendant, but claims a con-

structive possession, he must still show the facts amounting to such constructive possession. If the lands, when entered upon by the defendant, were apparently vacant and actually unoccupied, and the plaintiff merely proves an antecedent possession, at some prior time, he must go further and show that his actual possession was not abandoned; otherwise he cannot be said to have had even a constructive possession."

Many of the leading cases on the subject are referred to in the opinion of the court in the above case, and it is unnecessary to cite them here. They show that the rule has been recognized by nearly all those jurisdictions which acknowledge the common law, and that it is indeed one of the fundamental rules applicable to the action of ejectment, and it does not interfere with or overrule the other principle also applicable to that action, that a plaintiff is bound to recover on the strength of his own title, and not upon the weakness of that of his adversary. The rule is intended to prevent and redress trespasses and wrongs, and it is limited to cases where the defendants are trespassers and wrongdoers; it is, therefore, qualified in its application by the circumstances which constitute the origin of the adverse possession, and it does not extend to cases where the defendant has acquired possession peaceably and in good faith under color of title.

It would seem to be under this limitation of the rule that the defendant proved he had deeds from individuals who asserted they were some of the heirs at law of Walker, the original owner, but this clearly was not enough to show the entry was in good faith and under color of title. Otherwise, a party might wrongfully intrude and enter upon the possession of another, as a pure intruder, and yet make a claim of title under a deed which manifestly conveyed none, and which the party could not in good faith have supposed conveyed title, and then call upon plaintiff for full proof of title in fee. Such entry could not be excused by any subterfuge of that kind. Mr. Justice Matthews in the foregoing case, in speaking of a defendant acquiring possession peaceably and in good faith, under color of title, cited among others the case of *Drew* v. *Swift*, (46 N. Y. 204.) In that case the plaintiff relied upon a prior possession of the disputed land and gave no proof of a conveyance from the original proprietor, nor of any paper title, and he recovered upon the strength of such possession alone. This judgment was reversed in the Court of Appeals on the ground that the deed from a former owner, under which the defendant entered, included the premises in controversy, and the title to the *locus in quo* was, therefore, in the defendant, and he was entitled to a verdict and to retain the lands as within the boundaries of his grant; that the defendant was not a trespasser, but went into possession having title, and the plaintiff was not, therefore, entitled to recover upon proof of any prior possession other than an adverse possession for a period which would bar an entry, and no such possession was shown. The court held that the defendant was entitled to a judgment on the merits. In that case, as will be seen, the presumption of title aris-

ing from the prior possession by the plaintiff was overcome, and the defendant proved title in himself by virtue of the deed under which he entered. But the rule applies where there is on the side of the defendant an absence of proof showing any color of title in him, and in such case, where the plaintiff proves prior and peaceable possession under a claim and color of title, an entry and ouster by the defendant, without a pretense of title, will not be upheld, even though the defendant seek to justify his entrance by proof of a deed from some one who had no title to the premises, and this is so although at the time of such entry the lands were apparently vacant and actually unoccupied. (124 U. S. *supra*, 298.)

In *Jackson* v. *Denn*, (5 Cowen, 200,) the premises were actually vacant and unoccupied at the time of the entry by the defendant, who entered without color of title, but it was shown that the plaintiff had leased the land to a tenant who had left the premises without informing the landlord, who did not know of it until after the defendant entered. "This shows," said the court, "that the possession had never been abandoned by the lessors, without the *animus revertendi*." Prior possession, although the land was at the time of defendant's entry actually unoccupied, was also said in *Whitney* v. *Wright*, (15 Wend. 172,) to be sufficient to enable the plaintiff to recover as against a mere intruder, where the prior possession of the plaintiff had not been voluntarily relinquished without the *animus revertendi*.

In *Smith* v. *Lorillard*, (10 Johns. 337,) cited in *Sabariego* v. *Maverick*, (*supra*,) the plaintiff had been in the possession of the premises for many years until he was expelled by the British in 1776, and in 1795 the defendant entered upon the premises, which were then vacant, and continued to live there for some years. An action of ejectment was brought by the plaintiff, and it was held by the Supreme Court, Kent, Ch. J., delivering the opinion, that his prior possession was *prima facie* evidence of right, and it was not necessary that he should show either a possession of twenty years or a paper title so long as the subsequent possession of the defendant was acquired by mere entry without any lawful right.

The case of *Greenleaf* v. *Railroad Company*, cited by defendant, (141 N. Y. 395, reported on previous appeal in 132 N. Y. 408,) is not opposed to these views upon the question of occupancy. The case shows that the plaintiff never was in possession of the land, actually or constructively, never exercised the slightest act of ownership over it, nor were his grantors ever in possession or occupancy thereof, nor did they exercise any act of ownership over the land except when they assumed to convey it to others. In the report in 132 N. Y. the court stated that the land in question was on the beach, incapable of being enclosed with fences or occupied like ordinary agricultural lands, but at the same time there was no evidence that the land had ever been occupied by plaintiff or his grantors for any

purpose whatever, and it did not even appear that grass or sand had been taken from the land, or that it had been used as a means to approach the ocean for fishing or for any other purpose. It was simply the case of a conveyance by deed of land which the grantor had no title to and never occupied or possessed, the only claim of ownership being the execution of a deed assuming to convey the premises and on some occasions an oral statement of ownership. Clearly all this was wholly insufficient to show possession within the rule and the case is entirely unlike the one at bar.

Nor is it material that the plaintiff, in addition to proof of prior possession, also gave proof of a record title, which defendant claims is not valid. He is still entitled to recover on proof of his prior possession where the defendant is simply an intruder and has no color of title. As was said by Pollock, Chief Baron, in *Davison* v. *Gent*, (38 E. L. & Eq. 469,) if a party has a right to maintain an action of ejectment, by reason of his possession, and attempts also to show title and discloses a flaw in it, he may still recover by reason of his possession. He may say "I claim to recover both by reason of my title and my possession; and failing in one I will rely upon the other." His prior possession is good in any event as against a trespasser entering without right. Bramwell and Watson, BB., were of the same opinion. See also *Asher* v. *Whitlock*, (L. R. 1 Q. B. 1, 5,) opinion by Cockburn, Ch. J., and concurred in by Mellor and Lush, JJ.; decided in 1865.

Notwithstanding the authorities above referred to, the defendant claims that the law is different in this District, because he says, the law was different in Maryland at the time of the cession of the District to the United States, and that the law of Maryland as it was then governs this case. (2 Stat. 103, sec. 1.) Counsel makes this claim because the land originally formed part of the State of Maryland, and we must look to the law of the State in which the land is situated for the rules which govern the descent, alienation and transfer of property, and the effect and construction of wills and other conveyances. (*De Vaughn* v. *Hutchinson*, 165 U. S. 566, 570.) Upon this foundation counsel for the plaintiff in error seeks to show that the law of Maryland was, when this District was ceded by it to the United States, opposed to the rule enunciated by the trial court, and as evidence of what the law of Maryland was at that time he cites the case of *Mitchell* v. *Mitchell*, decided in 1851, and reported in 1 Md. 44. The case actually decided did not involve this question. According to the facts stated in the report, Francis J. Mitchell obtained possession of the premises in 1817, and held the same until the time of his death in 1825. Immediately after his death, his son, James D. Mitchell, his devisee, entered upon and possessed the land until his death in 1837. Immediately after his death, his widow Elizabeth, as devisee for life under his will, entered and possessed the land until her death in 1841. The plaintiff's lessor was the sole sister of the

whole blood of James D. Mitchell and his heir at law. The possession of the premises from 1817 to 1841, the time of the death of Elizabeth, was continuous, peaceable, exclusive, uninterrupted and adverse to all persons. The defendant was half brother of James D. Mitchell, and upon the death of Elizabeth entered on the land, declaring that it was his son's property, and that no other brother or sister survived the said James D. Mitchell. The verdict was for the defendant. The plaintiff was never personally in possession of the premises, but was simply claiming under James D. Mitchell as his heir at law. The defendant was in possession at the time the plaintiff commenced his suit, holding for his son under a claim that his son was the heir at law of James D. Mitchell. He was not a mere trespasser or intruder within the meaning of the rule, but took possession on the death of the life tenant, ousting no one, and claiming title for his son as heir at law. The question then became one of superiority of title as between the two claimants, the defendant being in possession.

Upon these facts it would seem that in other States which follow the common law the plaintiff would have been entitled to recover on proof that he was the sole heir at law of James D. Mitchell, the latter having been devisee of Francis J. Mitchell, and their possession, together with that of the widow of James D. Mitchell, as his devisee, having been continuous, peaceable, exclusive, uninterrupted and adverse to all persons from 1817 to 1841, when Elizabeth died and the defendant took possession. But the court held that in Maryland a plaintiff in ejectment was bound to recover, not only on the strength of his own title, but must show that he had a legal title to the land and a right of possession, and that he could not establish legal title in himself without first showing the land had been granted by the State. The case decides that upon a question of a conflict of title, the plaintiff must prove that the State had at some time granted the land. It was not a case of prior peaceable possession, interfered with by the defendant without pretense or color of title and simply as a mere trespasser or intruder

The cases of *Hall* v. *Gittings*, (2 H. & J. 125, decided in 1807;) *Cockey's Lessee* v. *Smith*, (3 H. & J. 20, 26, decided in 1810;) and *Wilson's Lessee* v. *Inloes*, (11 G. & J. 351, 358, decided in 1840,) are cited by the court, and justify the statement that there seems to be a particular rule in Maryland, by which it is necessary in actions of ejectment, where there is a real contest as to title, to show either a grant from the Lord Proprietary, or the State as successor, or else very strong facts and circumstances, as secondary evidence upon which to presume a grant, as mentioned in *Cockey's Lessee* v. *Smith*, (*supra.*) None of the cases presents the phase of a mere trespasser, intruding without color of title, upon the possession of the plaintiff and ousting him by a plain tort. It will be observed they were all decided since the cession. A Declaration of Rights preceded the first constitution

of Maryland, and was affirmed by it. (1 Kilty's Laws of Maryland, sec. 3, Declaration of Rights.) It was therein provided that the people of that State were entitled to the common law of England. The decisions of the courts of Maryland prior to the cession might be regarded as authority for what the common law then was in that State, but those made after the cession, while entitled to very high respect as the decisions of a State court, are not to be regarded as authority for what the common law was prior to 1801. That question was not involved in those cases.

There are, however, some cases in that State arising before the cesssion, in actions of ejectment, where possession alone seems to have been regarded as sufficient to maintain the action as against an intruder. They are *Hutchins' Lessee* v. *Erickson*, (1 H. & McH. 339,) and *House's Lessee* v. *Beatty*, (3 H. & McH. 182.) There was no opinion delivered in either case, (and those reports contain but few opinions in any of the decided cases,) but the facts stated in the first show that prior possession was relied on as against an intruder, by counsel, who referred to the very case of *Allen* v. *Rivington*, (2 Saund. 111,) which was cited to maintain the same proposition by Kent, Ch. J., in 10 Johns. (*supra*,) and by Mr. Justice Matthews in *Sabariego* v. *Maverick*, (*supra*.) The case certainly looks in the direction of maintaining the proposition charged by the court in this case. The facts in the other case do not make it so clear. Neither is very satisfactory authority, but they certainly do not maintain the proposition of the plaintiff in error, and we have found no case that does. Upon the whole, we think the almost universal character of the rule laid down by the trial court, taken in connection with the slight evidence in its favor in the two cases arising before the cession, and the absence of cases to the contrary, are enough to show that the rule prevailed in 1801 in Maryland the same as elsewhere.

There are no cases to which our attention has been called involving this question in the District of Columbia, which hold a different doctrine from that laid down herein by the trial court. In a very late case, the opinion in which was written by Mr. Chief Justice Alvey of the Court of Appeals, formerly Chief Justice of Maryland, (*Staffan* v. *Zeust*, 10 App. D. C. 260,) he made use of the following language:

"The action of ejectment is, strictly speaking, a possessory action, the plaintiff being required to show a present legal right to the possession of the premises as against the defendant. This may be done by evidence to establish the fact of prior possession by the plaintiff, even though that possession be for a time less than twenty years; such possession being sufficient to give rise to the presumption of title as against a defendant who has subsequently acquired possession by mere entry without any lawful right; provided, however, that such prior possession of the plaintiff was not voluntarily relinquished without the *animus revertendi*. (*Allen* v. *Rivington*, 2 Saund. 111; *Smith* v. *Lorillard*, 10 Johns. 338, 356; *Christy* v. *Scott*, 14 How. 282, 292; *Sabariego* v. *Maverick*, 124 U. S. 296, 300.)"

Although this exact question was not involved, it shows that the Court of Appeals of the District was not of opinion that the law in regard to ejectment was in any exceptional condition here. The Chief Justice cites the same case in 2 Saund., so frequently cited, to show the rule in this particular.

After a careful consideration of the question we are of opinion that the case of *Sebariego* v. *Maverick*, (*supra*,) expresses the true rule in this District as well as elsewhere, and therefore the trial court was right in the direction given to the jury, and the judgment of the Court of Appeals, affirming that of the trial court, must be

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.